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In The

Supreme Court of the United States

Supreme Court, U. S.
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September Term, 1973

No. 73-516

SECURITIES AND EXCHANGE COMMISSION,

vs.

ABERDEEN SECURITIES CO., ROBERT LEE RAPP, FRANK KESSELMAN,

SHERWIN SELIGSOHN and all others similarly situated,

Petitioners.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

JEROME E. BOGUTZ
BOGUTZ & MAZER, P.C.
Attorneys for Petitioners
401 Lewis Tower Building
Philadelphia, Pennsylvania 19102
(215) 546-5300

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In The

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SECURITIES AND EXCHANGE COMMISSION,

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SHERWIN SELIGSOHN and all others similarly situated,

Petitioners.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

The Petitioners, Sherwin Seligsohn and all others similarly situated, respectfully pray that a Writ of Certiorari issue to review the Judgment and Opinion of the United States Court of Appeals for the Third Circuit, entered in this proceeding on June 28, 1973.

OPINIONS BELOW

The Opinion of the Court of Appeals, as yet unreported, appears at Appendix A, *infra*, pp. 1a-12a. The Opinion of the District Court, as yet unreported, appears at Appendix B, *infra*, pp.13a-17a.

JURISDICTION

The Decree of the Court of Appeals (p. 1a , *infra*) was entered on June 28, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. Sec.1254(1).

QUESTIONS PRESENTED

1. Does section 6(d) of the Securities Investor Protection Act of 1970, 15 U.S.C. Sec. 78 aaa et seq. require that the Trustee of the debtor (broker-dealer) complete the open contractual commitments between the debtor and its public customer when the customer has paid debtor in full for the purchase of securities prior to the date when the debtor was declared "bankrupt", when the debtor acknowledged payment and confirmed order, but said public customer did not receive said securities?

2. Are the requirements of a Class Action met under F.R.C.P. 23 where a Trustee has been appointed under the Securities Investor Protection Act of 1970 and a representative public customer or customers of debtor petition the Court for a determination of his entitlement under the Act alleging opposition to a proposed schedule of distribution by the Trustee where the Trustee refuses to advocate his (or their) position and further alleging common questions of law and fact as to the petitioners and those similarly situated?

STATUTORY AND RULES PROVISIONS INVOLVED

Rule 23 of the Federal Rules of Civil Procedure, dealing with Class Actions, is reprinted in Appendix C, pp 18a-21a. *infra.*

This case involves the Securities Investor Protection Act of 1970, 15 U.S.C. Sec. 78aaa et seq which is reprinted in Appendix D, pp. 22a-43a, *infra.*

CONCISE STATEMENT OF THE CASE

Pursuant to the authority invested in it by the Securities Investor Protection Act of 1970 (SIPA), the Securities Investor Protection Corp. (SIPC) secured on Order in the District Court for the appointment of a Trustee to liquidate the assets of Aberdeen Security Co., Inc. and to pay the claims of the debtor's customers. This followed the intent of Congress in passing the Act which was to protect customers of financially distressed security dealers.

Petitioner Seligsohn had purchased and paid for 400 units of stock from Aberdeen and tendered the purchase price thereto. No authority was given to hold stock in street name. Aberdeen acknowledged the purchase and payment. Yet, upon garnisheeing the assets, the Trustee found only 100 units of the stock even though the debtor should have had in its possession 1300 units. The Trustee submitted a proposal whereby Petitioner would receive a pro rata share of the securities possessed by the debtor plus cash whereas the Petitioner asserts that the Trustee is under a duty to complete the "open contractual commitment" by purchasing the remaining units in the open market, as earlier directed by Petitioner, based upon Section 6d of the Act (15 U.S.C. 78 fff (d)). Petitioner further asked permission to appear in a Class Action representing those similarly situated. The Courts below ruled that Section 6(d) relates solely to commitments between the debtor and another broker dealer and not the debtor directly with a public customer and further that the procedures in the Act were adequate to protect all members of the Class.

BASIS FOR JURISDICTION IN FEDERAL COURT

The Security Investors Protection Act provides at Section 5 that SIPC may apply to the United States District Court under the Securities Exchange Act of 1934 when protection of customers is needed.

REASONS FOR GRANTING THE WRIT

1. The decision below directly conflicts with the intent of Congress.

This case presents an important question of first impression relating to the Securities Investor Protection Act of 1970 and the interpretation thereof. The particular section in question (6d) deals with the functions of the Trustee in liquidating the assets of the debtor, but the resolution of the problem, in fact, requires a review of the intent of Congress in passing the legislation.

The Courts below indicate that Congress intended to limit the protection of the Act to provide only for the completion of interbroker transactions when a customer is involved, however this is in direct conflict with the clear reading of the Act. Further, this interpretation is in direct conflict with the intent of Congress.

In particular, see the comments of Senator Bennet at 116 Cong. Record, 91st Congress, second session No. 198, S19966 where he states:

> "I believe it is important to point out that this legislation does not provide protection to broker or dealer firms themselves, nor does it in any way protect individuals who purchase securities from incurring losses which may result from decreases in the market value of those securities. *It only assures a customer that he will receive securities he has purchased or cash he has left with a firm in the event that firm faces financial insolvency*" (Emphasis added).

Reasons for Granting the Writ

Further as stated by Chairman Budge of the S.E.C.:

> "...The bill would require completion of securities transactions of the debtor broker-dealer made in the ordinary course of its business and outstanding on the date the corporation (SIPC) petitions the Court for the appointment of a Trustee, if such transaction involves a customer of the debtor *or* of another broker or dealer who entered into such transactions on behalf of such customer...." (Emphasis added).

As stated by Congressman Staggers of West Virginia, who directed passage of the bill through the debates in the House of Representatives:

> "I would like to emphasize at the outset of the discussion that the proposed legislation is designed to protect the more than twenty-six million Americans who have invested part of their savings in shares of American corporations. The bill is not designed to protect or to save Wall Street or any broker or dealer or any stock exchange, because they go into business with their eyes open. But this is intended to protect the *consumers* and those who invest" (Emphasis added).

Thus, the clear intent of Congress was to protect Customers themselves and not the broker-dealers to the detriment of public customers.

2. *Impact on Customers.*

The impact of the decision below on the public customers of broker-dealers is enormous. As is well known the act in question was passed as a direct result of the serious financial consequences suffered by public customers when numerous broker-dealers suffered

financial downfalls during the late 1960's. At this date, the investors are facing another crisis similar to the 1960's as there are daily reports of broker-dealers facing bankruptcy situations. It was brought out by the Respondents at the Hearing in this matter that there are currently 87 liquidations being handled by SIPC and additionally the New York Stock Exchange has 68 firms under scrutiny.

Most brokerage firms proudly display the SIPC logotype and proclaim that customers are now protected by federal regulations. Yet as held by the lower Courts, such customers are only protected in an interdealer transaction and not when the customer dealt solely with his brokerage firm where he placed his confidence. It should be noted that stockholder censuses indicate there are approximately 32 million investors in the United States. Accordingly, the decision in the Court below directly affects a substantial number of our citizens.

3. *Other Decisions.*

The interpretation of the specific section of the act involved herein has been the subject of at least one previous litigation (even though the act is of short life) in an unreported memorandum by the United States District Court of Massachusetts, Securities and Exchange Commission v. Security Planners Ltd., et al Civil Action No. 71-656 M, June 23, 1972. Further, as aforenoted there are 87 liquidations being administered by SIPC.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the Judgment and Opinion of the Court of Appeals for the Third Circuit.

Respectfully submitted,

BOGUTZ & MAZER, P.C.

JEROME E. BOGUTZ, ESQUIRE
401 Lewis Tower Building
Philadelphia, Pa. 19102
Counsel for Petitioners

APPENDIX A
OPINION OF COURT OF APPEALS
(Filed June 28, 1973)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 72-1708

SECURITIES AND EXCHANGE COMMISSION
500 North Capitol Street
Washington, D. C. 20548

v.

ABERDEEN SECURITIES CO., INC.
ROBERT LEE RAPP
FRANK KESSELMAN
2502 Silverside Road
Wilmington, Delaware 19180

Sherwin Seligsohn, Sheldon Raizes, Marilyn Raizes and all others similarly situated, *Appellants*

(D. C. Civil Action No. 4224)

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Argued on April 30, 1973

Before HUNTER and WEIS, *Circuit Judges* and NEWCOMER, *District Judge*

Wilfred R. Caron, Esquire
405 L'enfont Plaza, SW
Washington, D. C. 20024
Attorney for SIPC

Opinion Below

John Biggs, III, Esquire
Farmers Bank Building
Wilmington, Delaware 19801
Attorney for the Trustee

Jerry E. Bogutz, Esquire
Warren L. Sofian, Esquire
David S. Rasner, Esquire
401 Lewis Tower Building
Philadelphia, Pennsylvania
Attorneys for Appellants

OPINION OF THE COURT

(Filed June 28, 1973)

WEIS, *Circuit Judge.*

We are confronted in this case by the intricacies of the Securities Investor Protection Act of 1970[1] which seeks to provide assistance to those investors unfortunate enough to have selected a stockbroker, who perhaps is able to give sound financial advice to others but is unable to stay solvent himself. The intent of Congress to protect customers of financially distressed security dealers is clear, but the specifics of precise resolution of individual situations are clouded by the provisions of a statute which range far from the clarity of blue sky one might expect in this area of the law.

While the Securities and Exchange Commission has been given authority to enact appropriate regulations, it has not done so, and we therefore are left with the task of filling in rather large interstices in the Act resulting in part from engraftment of insurance provisions upon the pre-existing Section 60(e) bankruptcy provisions applicable to stockbrokers, 11 U.S.C. §96(e).

The Securities Investors Protection Act was passed

1. 15 U.S.C. §78aaa et seq.

by Congress in 1970 in response to demands that it provide some assurance to investors that they would not suffer financial loss as a consequence of bankruptcy of their stockbrokers. While the theory of the statute was that it was to provide a type of protection for security purchasers somewhat similar to that enjoyed by bank depositors under the FDIC, the complexities of the securities market obviously required some major differentiations.

In broad outline the legislation contemplates the appointment of a Receiver in the event of the insolvency of a broker who is covered by the terms of the statute. A liquidation, rather than a reorganization, is to be conducted and the claims of the debtor's customers are to be paid promptly. To the extent that the insolvent broker's assets are insufficient to satisfy obligations to his clientele, the Securities Investor Protection Corporation (SIPC), an entity established by the Act, will advance funds to pay claims up to $50,000 per customer, of which no more than $20,000 represents reimbursement of cash.

The account of a customer is to be valued as of the day when proceedings are instituted against the broker—the "filing date"—in order to determine his "net equity." A computation is made to arrive at the dollar amount of the customer's account by excluding from it, specifically identifiable property which is returned to him; by deducting indebtedness and other obligations, if any, to the insolvent broker; and by giving effect to certain open contractual commitments.

All property held by the debtor for the account of his patrons, other than that specifically identifiable, forms a single and separate fund in which all customers are entitled to share pro rata.

The Trustee may satisfy customer claims from the single and separate fund or from the monies advanced by SIPC or by a combination from the two sources. To the extent that a claim is satisfied by advances from SIPC, it is subrogated to the customer's rights to a pro rata share of the single and separate fund.

Opinion Below

We must deal with two distinct types of claims in this case which require more detailed analysis of specific portions of the Act and, in the interest of clarity, we will treat each claim separately.

THE SELIGSOHN CLAIM

One Sherman Seligsohn placed an order with his broker, Aberdeen Securities Company, Inc., on July 28, 1971 for 400 units[2] of Oratronics Corporation and remitted the full price of $2,000. He received a notice from Aberdeen advising that "as agent for the underwriter we have sold to you" 400 Oratronics and acknowledging receipt of payment. Seligsohn never received the certificates from Aberdeen or any indication that they were being held for his account by the broker.

On September 15, 1971 an application was made to the United States District Court for the District of Delaware for the issuance of a temporary restraining order against Aberdeen to enjoin violations of the Securities Act. Later a Trustee was appointed under the provisions of the Securities Investors Protection Act.

The Trustee found that Aberdeen had in its possession only 100 units of Oratronics and that three other customers had claims for 900 units in addition to Seligsohn's 400. In due course the Trustee submitted to the Court a proposal to pay Seligsohn $1,245.38 in cash plus 31 units of Oratronics which was his pro rata share of the securities which had been found in the debtor's office.

Seligsohn protested this method of satisfying his claim and since the securities had risen in value, understandably demanded that the Trustee provide him with 400 units instead.[3] Additionally, Seligsohn asked permission to

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2. These "units" were a combination of stock shares and warrants.

3. The practical problem presented in this claim involves time. As we read the act, a customer's position is frozen as of the date a brokerage house goes into liquidation. From that date until

appear in a class action as a representative of those similarly situated.

After hearing, the District Court approved the Trustee's proposed disposition of Seligsohn's claim and rejected the motion to treat the proceeding as a class action.

Section 6(g) of the Act[4] requires the Trustee to discharge promptly:

> ". . . all obligations of the debtor to each of its customers relating to, or net equities based upon, securities or cash by the delivery of securities or the effecting of payments to such customer . . . insofar as such obligations are ascertainable from the books and records of the debtor or are otherwise established to the satisfaction of the Trustee . . . For that purpose the court among other things shall—
>
> (1) In respect of claims relating to securities or cash, authorize the trustee to make payment out of moneys made available to the trustee by SIPC . . .
>
> (2) in respect of claims relating to, or net equities based upon, securities of a class and series of an issuer . . . authorize the trustee to deliver securities of such class and series if and to the extent available to satisfy such claims in whole or in part, with partial deliveries to be made pro rata to the greatest extent considered practicable by the trustee."

Section 6(c)(2)(A)(iv)[5] defines the "net equity" of a customer's account as:

---

his claims are paid, a customer is at the mercy of the market. If the market rises, he "loses"; if it falls, he "wins". To read the act as appellant contends would help the customer in a rising market, but it would leave open the problem of a falling market. The change of values between filing date and the time when the claim is paid is a problem for legislative, not judicial, solution. It should be remembered that before SIPC, customers of troubled brokerage houses might not have realized anything at all on their claims.

4. 15 U.S.C. §78fff(g).

5. 15 U.S.C. §78fff(c)(2)(A)(iv).

"the dollar amount thereof determined by giving effect to open contractual commitments completed as provided in subsection (d) of this section, by excluding any specifically identifiable property reclaimable by the customer, and by subtracting the indebtedness, if any, of the customer to the debtor from the sum which would have been owing by the debtor to the customer had the debtor liquidated, by sale or purchase on the filing date, all other securities and contractual commitments of the customer . . ."

The Trustee claimed that his action complied with these provisions of the Act. However, the claimant asserts that the duty of Aberdeen to deliver the certificates is an "open contractual commitment" as contemplated by subsection (d), which should be completed by the Trustee through the purchase of Oratronics units in the open market and delivery to Seligsohn.

Section 6(d)[6] reads in part:

"Completion of open contractual commitments. The trustee shall complete those contractual commitments of the debtor relating to transactions in securities which were made in the ordinary course of debtor's business and which were outstanding on the filing date—

(1) in which a customer had an interest, . . . For purposes of this subsection . . . (i) the term 'customer' means any person other than a broker or dealer, and (ii) a customer shall be deemed to have had an interest in a transaction if a broker participating in the transaction was acting as agent for a customer, or if a dealer participating in the transaction held a customer's order which was to be executed as a part of the transaction . . ."

The District Court ruled that undertakings involving

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6. 15 U.S.C. §78fff(d).

only the debtor and his customers are not the contractual commitments contemplated by subsection (d), and therefore the Trustee could not be forced to satisfy this claim in kind. We agree with the conclusion of the learned Court below.

Our review of the legislative history of the Act[7] and the testimony by various witnesses before committees of both the Senate and the House convinces us that the open contractual commitments covered by §6(d) are those between the debtor and another broker-dealer.

The securities industry was concerned with the "domino effect" of the financial difficulties of one broker extending to others with whom he dealt and wished to isolate problems to the one who was insolvent if at all possible. However, there was considerable sentiment in Congress to limit the protection of the Act to customers and not to extend it to transactions between brokers. The compromise ultimately agreed upon was to provide for completion of interbroker or interdealer transactions only when the interest of a customer on either side was involved. However, discretion was granted to the SEC to promulgate rules which would allow completion of transactions in which customers did not have an interest if this was determined to be in the public interest.[8]

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7. 1970 U.S.C. Congressional and Administrative News, 5254.

8. Hearings before the Subcommittee on Commerce and Finance of the Committee on Interstate and Foreign Commerce, House of Representatives on H.R. 13308, H.R. 17585, H.R. 18081, H.R. 18109, H.R. 18458, Ninety-first Congress, Second Session 1970.

Page 226, Mr. Budge [Chairman of the SEC]: "Yes, sir; the industry's proposal, if I recall it correctly, would permit the SEC to make the determination in this area. This language restricts the obligations to transactions on behalf of customers as distinguished from transactions between broker-dealers for the accounts of broker-dealers.

"Mr. Focht: Open transactions between broker-dealers for those accounts?

Only by limiting §6(d) to open interdealer contractual agreements is it possible to arrive at a harmonious relationship with other portions of the Act, such as the definition of "net equity," §6(d)(2)(IV), and a special provision for advancement of funds by the SIPC in addition to customers claims provided by §6(f)(2).[9]

If the order by a customer for the purchase or sale of a specific security has been placed by the debtor with another broker and remains uncompleted on the filing date, then the Trustee is required to complete the transaction. Similarly, if an order has been placed with the debtor by another broker on behalf of his customer, then performance would be required. Even in these situations the securities may not be specifically identifiable property, but of course

---

Note 8—*Continued*
"Mr. Budge: Yes, sir.

* * * * *

"Mr. Loomis [General Counsel for the SEC]" The thought here is where there is an open, uncompleted transaction for the account of public customers, whether it results in a profit or a loss to the debtor, it should be closed and completed in order to avoid uncertainties and the creation of various problems within the industry—people owing money and having money coming to them, owing securities, having securities coming to them . . .

* * * * *

Page 329:
"Mr. Budge: There also is a recognition of the fact that many interdealer transactions and bank transactions may be for the account of customers. Where this is so, the coverage also applies. The bill would require completion of securities transactions of the debtor broker-dealer made in the ordinary course of its business and outstanding on the date the Corporation petitions the court for the appointment of a trustee, if such transaction involves a customer of the debtor of another broker or dealer who entered into such transaction on behalf of a customer. Open transactions between the debtor and other brokers or dealers where neither was acting on behalf of a customer could not be completed by the trustee unless the Commission, by rule or regulation, determined that the completion of such commitments are in the public interest."

9. 15 U.S.C. §78fff(2).

the transactions would be "given effect" in computing the dollar value of the "net equity" of the customer.

We conclude, therefore, that the District Court was correct in refusing to order the Trustee to purchase the Oratronics units in the open market and that it did not err in approving the settlement proposed by the Trustee.[10]

THE RAIZES CLAIM

In February, 1970, petitioner Raizes placed an order with Aberdeen to purchase 100 shares of Boatland, Inc., a prospective new issue. This purchase was confirmed by Aberdeen as principal within a few days and was paid for by the Raizes in the form of a credit of $500 from their account. No certificates were ever received from Aberdeen although funds were transmitted by it to Charter Securities, Inc., a broker-dealer in New York City, which was underwriting the Boatland offering. The transaction was not completed because the stock was never issued, and Boatland and Charter Securities both went into bankruptcy. The Raizes filed a claim against Charter as a general unsecured creditor in that bankruptcy proceeding. All of these events occurred before the filing date of September 15, 1971.

In the Court below, the Trustee determined that the net equity as to the Boatland transaction on the date of filing was zero and therefore proposed to make no payment to the Raizes. The District Court reluctantly agreed with this action, stating that it was unfortunate that the Raizes would receive no compensation for their loss but that the wording of the statute mandated that result.

We feel that the Court below did not correctly consider

10. A similar interpretation of §6(d) contractual commitments was reached by the district court for the District of Massachusetts in an unreported memorandum, Securities and Exchange Commission v. Security Planners Ltd., et al., Civil Action No. 71-656-M, June 23, 1972.

the definition of net equity in the context of this fact situation and remand for further proceedings.

We need not consider whether the transaction might fall in the category of a subsection (d) uncompleted commitment because the facts demonstrate that since this particular stock was not in existence, the purchase never could be made. The Raizes, therefore, do not have a claim for the stock itself.

At the hearing, the Court properly posited the possibility of the existence of a claim by these customers against Aberdeen but was diverted by argument on the applicability of open contractual commitment or single and separate fund theories rather than being aided by an analysis of the term "net equity."

The record is silent on the point but, for purpose of discussion, we assume that the Raizes total claim was less than $50,000 and that the cash portion thereof less than the $20,000 coverage provided by the Act. In such a situation the single and separate fund concept is of academic, if any at all, interest to the customers. Their prime concern must be to insist upon payment of the "net equity" valuation with funds advanced by the SIPC as necessary.

The definition of "net equity" was taken in part from §60(e) of the Bankruptcy Act[11] but was modified somewhat in the drafting of the Securities Investors Protection Act of 1970. Unfortunately, some clarity was lost in the process. Thus the particular section does not make it crystal clear that the customer's net equity consists of both his cash balance and the securities account valued as of the filing date. We have no doubt, however, that the "dollar amount" of a customer's account includes his cash which the broker has, or should have, been holding. Indeed, the SIPC says in its brief:

> "In short, the 1970 Act contemplates (as did §60(e)) that a customer's cash and securities position will be *netted out* as of the filing date . . ."

---

11. 11 U.S.C. §96(e).

Furthermore, subsection (g) recites the duty of the Trustee:

> "To discharge promptly . . . all *obligations* of the debtor to each of its customers relating to, or net equities based upon securities or cash . . ."

Thus, if under local law, or by virtue of regulations under which it operated, the debtor was obligated to refund the $500 to the Raizes because of inability to deliver the Boatland stock, then there would be a claim for cash properly included in the term "net equity."

Since the record does not contain sufficient facts upon which we can rule, we remand to the District Court for appropriate findings in order to determine if there was, on the filing date, a legally sufficient claim by the Raizes against the debtor because of an obligation to return the money which had been made available to Aberdeen for purchase of a nonexistent stock.

THE CLASS ACTION ISSUE

Both Seligsohn and Raizes petitioned the Court to treat their claims as part of a class action. The District Court declined to so order contending that the procedures in the bankruptcy proceeding were adequate to protect the interest of all prospective members of the class. We find no error in the District Court ruling.

While there may be some question whether the order of the lower Court in this respect is appealable, we prefer to deal with it on the merits at this time. *See* 2 Collier on Bankruptcy, 14th Ed., pp. 792, 794, 789.

This Court has already decided that Fed.R.Civ.P. 23, the class action provision, is not an appropriate vehicle in a railroad reorganization. *See In Re: Penn Central Transportation Company*, 328 F. Supp. 1273 (E.D. Pa. 1971), aff'd. 455 F. 2d 976 (3rd Cir. 1972). Much the same considerations which apply to the reorganization of a railroad apply also in this proceeding which is to be conducted

under those provisions of Chapter X of the Bankruptcy Act not inconsistent with the Investors Protection statute. See §§78eee(b)(2) and 78fff(b)(1).

All creditors were given notice of the insolvency proceedings, and they were given the opportunity to file claims. A ruling by the Court as to one category of creditors certainly would apply to all in that group. Furthermore, this is not a plenary suit but a liquidation proceeding which should be concluded as expeditiously as possible. We see no indication that a class action designation would have such a result. The petitioners failed to show that the method they advocated was superior to the procedures being followed by the Bankruptcy Court. The determination made by the District Court on this point are amply supported by the record and well within its discretion.

The orders as to the Seligsohn claim and the denial of applications to proceed as class actions will be affirmed. The order as to the Raizes claim will be reversed and remanded for further proceedings not inconsistent with this opinion.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

APPENDIX B
OPINION BELOW OF DISTRICT COURT
(Filed June 12, 1972)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

SECURITIES INVESTOR PROTECTION CORPORATION,

Applicant,

v.

ABERDEEN SECURITIES CO., INC., ROBERT LEE RAPP, and FRANK KESSELMAN,

Defendants.

NOW TO WIT, on this 12 day of June, A.D. 1972, upon the application of Claude P. Hudson, Trustee for Aberdeen Securities Co., Inc., for authorization to make a partial distribution and for various other relief as prayed for in a Petition filed by him herein on March 28, 1972, as amended by a further Petition filed by him on April 24, 1972 (together hereinbelow referred to as the Trustee's Application), notice having been given pursuant to the Order of this Court dated April 13, 1972, and the Court having fixed May 22, 1972 as the time to hear and consider the Trustee's Application, said time being also fixed as the time to hear (i) objections to the Trustee's Application, (ii) a "Petition for Release of Funds",

another "Petition for Release of Funds", and a "Motion for Class Action Determination" filed by Jerome E. Bogutz, Esquire, on behalf of Sherwyn Seligsohn, said claim being claim No. 95 of the Trustee's Claims Register, and a further "Petition to Establish Identifiable Subclass" filed by Jerome E. Bogutz, Esquire on behalf of Sheldon Raizes and Marilyn Raizes, and various persons having been heard; it is,

ORDERED, that the Trustee's Application is hereby approved in the manner and to the extent herein below ordered and decreed:

1. ORDERED that Claude P. Hudson, Trustee, is authorized to complete those contractual commitments of Aberdeen Securities Co., Inc. ("Debtor") in the manner set forth in Schedule A, which is attached to and part of Trustee's Application; and

FURTHER ORDERED that Claude P. Hudson, Trustee, is hereby authorized to request SIPC to advance to him the sum of $5,549.76 so as to provide funds to complete said commitments; and

2. ORDERED that Claude P. Hudson, Trustee, is authorized to effect delivery, as soon as practicable, of specifically identifiable securities, in "street names" or in customer names, to the customers of Debtor entitled thereto as set forth in Schedule B, as amended, which is attached to and a part of Trustee's Application, and as further modified by the Court with respect to the claim of B.A.R. Investment Club, Claim No. 234, and Peter Romano, Claim No. 233; and

3. ORDERED that Claude P. Hudson, Trustee, is authorized to effect delivery, as soon as practicable, of securities in the single and separate fund, in "street names" or in customer names, to customers of Debtor in the

manner specified in Schedule B, as amended, and as further modified by the Court with respect to the claim of B.A.R. Investment Club, Claim No. 234, and Peter Romano, Claim No. 233; and

4. ORDERED that Claude P. Hudson, Trustee, is authorized to pay to customers of Debtor, out of monies made available by SIPC, cash in lieu of securities as set forth in Schedule B, as amended; and

FURTHER ORDERED that the said Trustee is authorized to pay customers, out of monies made available by SIPC, their free credit balances as provided in Schedule B, as amended; and

5. ORDERED that Claude P. Hudson, Trustee, is authorized to request SIPC to advance to him the sum of $92,303.85, said sum to be utilized by the Trustee to pay customers of Debtor their free credit balances and cash in lieu of securities as provided in Schedule B, as amended; and

6. ORDERED that Claude P. Hudson, Trustee, is authorized to make said deliveries of securities and payments of monies without further notice to customers or creditors of Debtor; and

7. ORDERED that Claude P. Hudson, Trustee, is authorized, but not required, to condition payments and deliveries of property to customers of Debtor who owe monies or securities to Debtor upon the payment or delivery to him of the monies or securities owed to Debtor by each of such customers; and

FURTHER ORDERED that said Trustee is authorized, but not required, to condition payments and deliveries of property to customers of Debtor upon the execution by

customers of affidavits and receipts, the forms of which to be determined by said Trustee; and

FURTHER ORDERED that said Trustee is authorized, but not required, to condition the completion of contractual commitments upon the execution by broker-dealers of receipts, the form of which to be determined by said Trustee; and it is

FURTHER ORDERED that the "Petition for Release of Funds", another "Petition for Release of Funds", a "Motion for a Class Action" filed by Jerome E. Bogutz, Esquire on behalf of Sherwyn Seligsohn be and they hereby are in all respects denied; and it is

FURTHER ORDERED that the "Petition to Establish an Identifiable Subclass" filed by Jerome E. Bogutz on behalf of Sheldon Raizes and Marilyn Raizes be and it hereby is in all respects denied; and it is

FURTHER ORDERED that all of the objections of customers, except that of B.A.R. Investment Club, filed herein to the Trustee's Application be and they hereby are in all respects denied; and it is

ORDERED that Claude P. Hudson, Trustee, shall mail a copy of this Order to each such objecting customer.

s/ Steel
Judge

APPROVED AS TO FORM:

s/ John Biggs,
John Biggs III
616 Farmers Bank Building
Wilmington, Delaware 19801

Attorney for Claude P. Hudson,
Trustee

s/ Robert K. Payson
Robert K. Payson
Delaware Trust Building
Wilmington, Delaware 19801

Attorney for Aberdeen Securities Co., Inc.,
Robert Lee Rapp, and Frank Kesselman

s/ Jerome E. Bogutz, J.P.A.
Jerome E. Bogutz
Fourth Floor
Lewis Tower Building
Fifteenth at Locust Street
Philadelphia, Pennsylvania 19102

Attorney for Sherwyn Seligsohn,
Sheldon Raizes, and Marilyn Raizes

CERTIFIED
AS A TRUE COPY:
ATTEST:
Edward G. Pollard,
Clerk.
By s/ H.C. Tucker
Deputy Clerk

FILED

EDWARD G. POLLARD

JUN 12, 1972

Deputy Clerk

APPENDIX C

RULE 23 OF THE FEDERAL RULES OF CIVIL PROCEDURE

Rule 23. Class Actions

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

Rule 23 of the Federal Rules of Civil Procedure

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class is individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

(c) Determination by Order Whether Class Action to be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions.

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subdivision (b) (3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude him from the class if he so requests by a specified date; (B) the judgment whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

Rule 23 of the Federal Rules of Civil Procedure

(3) The judgment in an action maintained as a class action under subdivision (b) (1) or (b) (2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (b) (3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (c) (2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

(d) Orders in Conduct of Actions. In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

Rule 23 of the Federal Rules of Civil Procedure

(e) Dismissal or Compromise. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

As amended Feb. 28, 1966, eff. July 1, 1966.

APPENDIX D

SECURITIES INVESTOR PROTECTION ACT

[Following Page]

Public Law 91-598
91st Congress, H. R. 19333
December 30, 1970

An Act

84 STAT. 1636

To provide greater protection for customers of registered brokers and dealers and members of national securities exchanges.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Securities Investor Protection Act of 1970.

SECTION 1. SHORT TITLE, ETC.

(a) SHORT TITLE; TABLE OF CONTENTS.—This Act, with the following table of contents, may be cited as the "Securities Investor Protection Act of 1970".

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(f) SIPC exempt from taxation.
(g) Section 20(a) of 1934 Act not to apply.
(h) SEC study of unsafe or unsound practices.
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(b) SECTION HEADINGS.—Headings for sections and subsections, and the table of contents, are included only for convenience, and shall be given no legal effect.

SEC. 2. APPLICATION OF SECURITIES EXCHANGE ACT OF 1934.

Except as otherwise provided in this Act, the provisions of the Securities Exchange Act of 1934 (15 U.S.C., sec. 78a and fol.; hereinafter referred to as the "1934 Act") apply as if this Act constituted an amendment to, and was included as a section of, such Act.

48 Stat. 881.

SEC. 3. SECURITIES INVESTOR PROTECTION CORPORATION.

(a) CREATION.—There is hereby established a body corporate to be known as "Securities Investor Protection Corporation" (hereafter in this Act referred to as "SIPC"). SIPC shall be a nonprofit corporation and shall have succession until dissolved by act of the Congress. SIPC shall—

(1) not be an agency or establishment of the United States Government;

(2) be a membership corporation the members of which shall be—

(A) all persons registered as brokers or dealers under section 15(b) of the 1934 Act, and

78 Stat. 570.
15 USC 78o.

(B) all persons who are members of a national securities exchange,

other than persons whose business as a broker or dealer consists exclusively of (i) the distribution of shares of registered open end investment companies or unit investment trusts, (ii) the sale of variable annuities, (iii) the business of insurance, or (iv) the business of rendering investment advisory services to one or more registered investment companies or insurance company separate accounts; and

(3) except as otherwise provided in this Act, be subject to, and have all the powers conferred upon a nonprofit corporation by, the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29–1001 and fol.).

76 Stat. 265.

(b) POWERS.—In addition to the powers granted to SIPC elsewhere in this Act, SIPC shall have the power—

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, in any court, State, or Federal;

(2) to adopt, alter, and use a corporate seal, which shall be judicially noticed;

(3) subject to the provisions of this Act, to adopt, amend, and repeal, by its Board of Directors, bylaws and rules relating to the conduct of its business and the exercise of all other rights and powers granted to it by this Act;

(4) to conduct its business (including the carrying on of operations and the maintenance of offices) and to exercise all other rights and powers granted to it by this Act in any State or other jurisdiction without regard to any qualification, licensing, or other statute in such State or other jurisdiction;

(5) to lease, purchase, accept gifts or donations of or otherwise acquire, to own, hold, improve, use, or otherwise deal in or with, and to sell, convey, mortgage, pledge, lease, exchange or otherwise dispose of, any property, real, personal or mixed, or any interest therein, wherever situated;

(6) subject to the provisions of subsection (c), to elect or appoint such officers, attorneys, employees, and agents as may be required, to determine their qualifications, to define their duties, to fix their salaries, require bonds for them and fix the penalty thereof;

(7) to enter into contracts, to execute instruments, to incur liabilities, and to do any and all other acts and things as may be necessary or incidental to the conduct of its business and the exercise of all other rights and powers granted to SIPC by this Act; and

(8) by bylaw, to establish its fiscal year.

(c) BOARD OF DIRECTORS.—

(1) FUNCTIONS.—SIPC shall have a Board of Directors which, subject to the provisions of this Act, shall determine the policies which shall govern the operations of SIPC.

(2) NUMBER AND APPOINTMENT.—The Board of Directors shall consist of seven persons as follows:

(A) One director shall be appointed by the Secretary of the Treasury from among the officers and employees of the Department of the Treasury.

(B) One director shall be appointed by the Federal Reserve Board from among the officers and employees of the Federal Reserve Board.

(C) Five directors shall be appointed by the President, by and with the advice and consent of the Senate, as follows—

(i) three such directors shall be selected from among persons who are associated with, and representative of different aspects of, the securities industry, not all of whom shall be from the same geographical area of the United States, and

(ii) two such directors shall be selected from the general public from among persons who are not associated with any broker or dealer, within the meaning of paragraph (18) of section 3(a) of the 1934 Act, or similarly associated with a national securities exchange or other securities industry group and who have not had any such association during the two years preceding appointment. 78 Stat. 565. 15 USC 78c.

(3) CHAIRMAN AND VICE CHAIRMAN.—The President shall designate a Chairman and Vice Chairman from among those directors appointed under paragraph (2)(C)(ii) of this subsection.

(4) TERMS.—

(A) Except as provided in subparagraphs (B) and (C), each director shall be appointed for a term of three years.

(B) Of the directors first appointed under paragraph (2)—

(i) two shall hold office for a term expiring on December 31, 1971,

(ii) two shall hold office for a term expiring on December 31, 1972, and

(iii) three shall hold office for a term expiring on December 31, 1973,

as designated by the President at the time they take office. Such designation shall be made in a manner which will assure

that no two persons appointed under the authority of the same clause of paragraph (2)(C) shall have terms which expire simultaneously.

(C) A vacancy in the Board shall be filled in the same manner as the original appointment was made. Any director appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A director may serve after the expiration of his term until his successor has taken office.

(5) COMPENSATION, ETC.—All matters relating to compensation of directors and the determination of dollar volume of trading on exchanges shall be as provided in the bylaws of SIPC.

(d) MEETINGS OF BOARD.—The Board of Directors shall meet at the call of its Chairman, or as otherwise provided by the bylaws of SIPC.

(e) BYLAWS.—

(1) As soon as practicable but not later than forty-five days after the date of enactment of this Act, the Board of Directors shall adopt initial bylaws and rules relating to the conduct of the business of SIPC and the exercise of the rights and powers granted to it by this Act, and shall file a copy thereof with the Commission. Thereafter, the Board of Directors may alter, supplement, or repeal any existing bylaw or rule and may adopt additional bylaws and rules, and in each such case shall file a copy thereof with the Commission.

(2) Each such initial bylaw or rule, alteration, supplement, or repeal, and additional bylaw or rule shall take effect upon the thirtieth day (or such later date as SIPC may designate) after the filing of the copy thereof with the Commission or upon such earlier date as the Commission may determine, unless the Commission shall, by notice to SIPC setting forth the reasons therefor, disapprove the same, in whole or in part, as being contrary to the public interest or contrary to the purposes of this Act.

(3) The Commission may, by such rules or regulations as it determines to be necessary or appropriate in the public interest or to effectuate the purposes of this Act, require the adoption, amendment, alteration of, supplement to or rescission of any bylaw or rule by SIPC, whenever adopted.

(f) OTHER MEMBERS.—

(1) Any person who is a broker, dealer, or member of a national securities exchange and who is excluded from membership in SIPC under subsection (a) may become a member of SIPC under such conditions and upon such terms as SIPC shall require.

(2) Notwithstanding anything contained in subsections (c) and (d) of section 4, any person who becomes a member of the corporation under this subsection shall be subject to such assessments as SIPC determines to be equitable.

SEC. 4. SIPC FUND.

(a) IN GENERAL.—

(1) ESTABLISHMENT OF FUND.—SIPC shall establish a "SIPC Fund" (hereinafter in this Act referred to as the "fund"). All amounts received by SIPC (other than amounts paid directly to any lender pursuant to any pledge securing a borrowing by SIPC) shall be deposited in the fund, and all expenditures made by SIPC shall be made out of the fund.

(2) BALANCE OF THE FUND.—The balance of the fund at any time shall consist of the aggregate at such time of the following items:

(A) Cash on hand or on deposit.

(B) Amounts invested in United States Government or agency securities.

(C) Confirmed lines of credit.

(3) CONFIRMED LINES OF CREDIT.—For purposes of this section, the amount of confirmed lines of credit as of any time is the aggregate amount which SIPC at such time has the right to borrow from banks and other financial institutions under confirmed lines of credit or other written agreements which provide that moneys so borrowed are to be repayable by SIPC not less than one year from the time of such borrowings (including, for purposes of determining when such moneys are repayable, all rights of extension, refunding, or renewal at the election of SIPC).

(b) INITIAL REQUIRED BALANCE FOR FUND.—Within one hundred and twenty days from the date of enactment of this Act, the balance of the fund shall aggregate not less than $75,000,000, less any amounts expended from the fund within that period.

(c) ASSESSMENTS.—

(1) INITIAL ASSESSMENTS.—Each member of SIPC shall pay to SIPC, or the collection agent for SIPC specified in section 9(a), on or before the one hundred and twentieth day following the date of enactment of this Act, an assessment equal to one-eighth of 1 per centum of the gross revenues from the securities business of such member during the calendar year 1969, or if the Commission shall determine that, for purposes of assessment pursuant to this paragraph, a lesser percentage of gross revenues from the securities business is appropriate for any class or classes of members (taking into account relevant factors, including but not limited to types of business done and nature of securities sold), such lesser percentages as the Commission, by rule or regulation, shall establish for such class or classes, but in no event less than one-sixteenth of 1 per centum for any such class. In no event shall any assessment upon a member pursuant to this paragraph be less than $150.

(2) GENERAL ASSESSMENT AUTHORITY.—SIPC shall, by bylaw or rule, impose upon its members such assessments as, after consultation with self-regulatory organizations, SIPC may deem necessary and appropriate to establish and maintain the fund and to repay any borrowings by SIPC. Any assessments so made shall be in conformity with contractual obligations made by SIPC in connection with any borrowing incurred by SIPC. Subject to paragraph (3) and subsection (d)(1)(A), any such assessment upon the members, or any one or more classes thereof, may, in whole or in part, be based upon or measured by (A) the amount of their gross revenues from the securities business, or (B) all or any of the following factors: the amount or composition of their gross revenues from the securities business, the number or dollar volume of transactions effected by them, the number of customer accounts maintained by them or the amounts of cash and securities in such accounts, their net capital, the nature of their activities (whether in the securities business or otherwise) and the consequent risks, or other relevant factors.

(3) LIMITATIONS.—Notwithstanding any other provision of this Act (other than section 3(f))—

(A) no assessment shall be made upon a member otherwise than pursuant to paragraph (1) or (2) of this subsection,

(B) an assessment may be made under paragraph (2) of this subsection at a rate in excess of one-half of one per centum

during any twelve-month period if SIPC determines, in accordance with a bylaw or rule, that such rate of assessment during such period will not have a material adverse effect on the financial condition of its members or their customers, except that no assessments shall be made pursuant to such paragraph upon a member which require payments during any such period which exceed in the aggregate one per centum of such member's gross revenues from the securities business for such period, and

(C) no assessment shall include any charge based upon the member's activities (i) in the distribution of shares of registered open end investment companies or unit investment trusts, (ii) in the sale of variable annuities, (iii) in the business of insurance, or (iv) in the business of rendering investment advisory services to one or more registered investment companies or insurance company separate accounts.

(d) REQUIREMENTS RESPECTING ASSESSMENTS AND LINES OF CREDIT.—

(1) ASSESSMENTS.—

(A) ½ OF 1 PERCENT ASSESSMENT.—Subject to subsection (c)(3), SIPC shall impose upon each of its members an assessment at a rate of not less than one-half of 1 per centum per annum of the gross revenues from the securities business of such member—

(i) until the balance of the fund aggregates not less than $150,000,000 (or such other amount as the Commission may determine in the public interest),

(ii) during any period when there is outstanding borrowing by SIPC pursuant to subsection (f) or subsection (g) of this section, and

(iii) whenever the balance of the fund (exclusive of confirmed lines of credit) is below $100,000,000 (or such other amount as the Commission may determine in the public interest).

(B) ¼ OF 1 PERCENT ASSESSMENT.—During any period during which—

(i) the balance of the fund (exclusive of confirmed lines of credit) aggregates less than $150,000,000 (or such other amount as the Commission has determined under paragraph (2)(B)), or

(ii) SIPC is required under paragraph (2)(B) to phase out of the fund all confirmed lines of credit,

SIPC shall endeavor to make assessments in such a manner that the aggregate assessments payable by its members during such period shall not be less than one-fourth of 1 per centum per annum of the aggregate gross revenues from the securities business for such members during such period.

(2) LINES OF CREDIT.—

(A) $50,000,000 LIMIT AFTER 1973.—After December 31, 1973, confirmed lines of credit shall not constitute more than $50,000,000 of the balance of the fund.

(B) PHASEOUT REQUIREMENT.—When the balance of the fund aggregates $150,000,000 (or such other amount as the Commission may determine in the public interest) SIPC shall phase out of the fund all confirmed lines of credit.

(e) PRIOR TRUSTS; OVERPAYMENTS AND UNDERPAYMENTS.—

(1) PRIOR TRUSTS.—There may be contributed and transferred at any time to SIPC any funds held by any trust established by a

self-regulatory organization prior to January 1, 1970, and the amounts so contributed and transferred shall be applied, as may be determined by SIPC with approval of the Commission, as a reduction in the amounts payable pursuant to assessments made or to be made by SIPC upon members of such self-regulatory organization pursuant to subsection (c)(2). No such reduction shall be made at any time when there is outstanding any borrowing by SIPC pursuant to subsection (g) of this section or any borrowings under confirmed lines of credit.

(2) OVERPAYMENTS.—To the extent that any payment by a member exceeds the maximum rate permitted by subsection (c) of this section, the excess shall not be recoverable except against future payments by such member in accordance with a bylaw or rule of SIPC.

(3) UNDERPAYMENTS.—If a member fails to pay when due all or any part of an assessment made upon such member, the unpaid portion thereof shall bear interest at such rate as may be determined by SIPC by bylaw or rule.

(f) BORROWING AUTHORITY.—SIPC shall have the power to borrow moneys and to evidence such borrowed moneys by the issuance of bonds, notes, or other evidences of indebtedness, all upon such terms and conditions as the Board of Directors may determine in the case of a borrowing other than pursuant to subsection (g) of this section, or as may be prescribed by the Commission in the case of a borrowing pursuant to subsection (g). The interest payable on a borrowing pursuant to subsection (g) shall be equal to the interest payable on the related notes or other obligations issued by the Commission to the Secretary of the Treasury. To secure the payment of the principal of, and interest and premium, if any, on, all bonds, notes, or other evidences of indebtedness so issued, SIPC may make agreements with respect to the amount of future assessments to be made upon members and may pledge all or any part of the assets of SIPC and of the assessments made or to be made upon members. Any such pledge of future assessments shall (subject to any prior pledge) be valid and binding from the time that it is made, and the assessments so pledged and thereafter received by SIPC, or any examining authority as collection agent for SIPC, shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding against all parties having claims of any kind against SIPC or such collection agent whether pursuant to this Act, in tort, contract or otherwise, irrespective of whether such parties have notice thereof. During any period when a borrowing by SIPC pursuant to subsection (g) of this section is outstanding, no pledge of any assessment upon a member to secure any bonds, notes, or other evidences of indebtedness issued other than pursuant to subsection (g) of this section shall be effective as to the excess of the payments under the assessment on such member during any twelve-month period over one-fourth of 1 per centum of such member's gross revenues from the securities business for such period. Neither the instrument by which a pledge is authorized or created, nor any statement or other document relative thereto, need be filed or recorded in any State or other jurisdiction. The Commission may by rule or regulation provide for the filing of any instrument by which a pledge or borrowing is authorized or created, but the failure to make or any defect in any such filing shall not affect the validity of such pledge or borrowing.

(g) SEC LOANS TO SIPC.—In the event that the fund is or may reasonably appear to be insufficient for the purposes of this Act, the Commission is authorized to make loans to SIPC. At the time of appli-

cation for, and as a condition to, any such loan, SIPC shall file with the Commission a statement with respect to the anticipated use of the proceeds of the loan. If the Commission determines that such loan is necessary for the protection of customers of brokers or dealers and the maintenance of confidence in the United States securities markets and that SIPC has submitted a plan which provides as reasonable an assurance of prompt repayment as may be feasible under the circumstances, then the Commission shall so certify to the Secretary of the Treasury, and issue notes or other obligations to the Secretary of the Treasury pursuant to subsection (h). If the Commission determines that the amount or time for payment of the assessments pursuant to such plan would not satisfactorily provide for the repayment of such loan, it may, by rules and regulations, impose upon the purchasers of equity securities in transactions on national securities exchanges and in the over-the-counter markets a transaction fee in such amount as at any time or from time to time it may determine to be appropriate, but not exceeding one-fiftieth of 1 per centum of the purchase price of the securities. No such fee shall be imposed on a transaction (as defined by rules or regulations of the Commission) of less than $5,000. For the purposes of the next preceding sentence, (A) the fee shall be based upon the total dollar amount of each purchase; (B) the fee shall not apply to any purchase on a national securities exchange or in an over-the-counter market by or for the account of a broker or dealer registered under section 15(b) of the 1934 Act or a member of a national securities exchange unless such purchase is for an investment account of such broker, dealer, or member (and for this purpose any transfer from a trading account to an investment account shall be deemed a purchase at fair market value); and (C) the Commission by rules and regulations may exempt any transaction in the over-the-counter markets in order to provide for the assessment of fees on purchasers in transactions in those markets on a basis comparable to the assessment of fees on purchasers in transactions on national securities exchanges. Such fee shall be collected by the broker or dealer effecting the transaction for or with the purchaser and shall be paid to SIPC in the same manner as assessments imposed pursuant to subsection (c).

78 Stat. 570.
15 USC 78o.

(h) SEC NOTES ISSUED TO TREASURY.—To enable the Commission to make loans under subsection (g), the Commission is authorized to issue to the Secretary of the Treasury notes or other obligations in an aggregate amount of not to exceed $1,000,000,000, in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury may reduce the interest rate if he determines such reduction to be in the national interest. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act, as amended, are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such

40 Stat. 288.
31 USC 774.

notes or other obligations shall be treated as public debt transactions of the United States.

(i) "GROSS REVENUES" DEFINED.—

(1) IN GENERAL.—For purposes of this Act, the term "gross revenues from the securities business" means the sum of (but without duplication):

(A) commissions earned in connection with transactions in securities effected for customers as agent (net of commissions paid to other brokers and dealers in connection with such transactions) and markups in respect of purchases or sales of securities as principal,

(B) charges for executing or clearing transactions in securities for other brokers and dealers,

(C) the net realized gain, if any, from principal transactions in securities in trading accounts,

(D) the net profit, if any, from the management of or participation in the underwriting or distribution of securities,

(E) interest earned on customers' securities accounts,

(F) fees for investment advisory services (except when rendered to one or more registered investment companies or insurance company separate accounts) or account supervision in respect of securities,

(G) fees for the solicitation of proxies with respect to, or tenders or exchanges of, securities,

(H) income from service charges or other surcharges in respect of securities,

(I) except as otherwise provided by rule or regulation of the Commission, dividends and interest received on securities in investment accounts of the broker or dealer,

(J) fees in connection with put, call, and other option transactions in securities, and

(K) fees and other income for all other investment banking services.

Such term does not include revenues received by a broker or dealer in connection with the distribution of shares of a registered open end investment company or unit investment trust or revenues derived by a broker or dealer from the sale of variable annuities or from the conduct of the business of insurance.

(2) CONSOLIDATED GROUP.—Except as otherwise provided by SIPC by bylaw or rule, gross revenues from the securities business of a broker or dealer shall be computed on a consolidated basis for such broker or dealer and all its subsidiaries, and the operations of a broker or dealer shall include those of any business to which such broker or dealer has succeeded.

(3) MEANING OF TERMS NOT DEFINED.—SIPC may by bylaw or rule define all terms used in this subsection insofar as such definitions are not inconsistent with the provisions of this subsection.

SEC. 5. PROTECTION OF CUSTOMERS.

(a) DETERMINATION OF NEED OF PROTECTION.—

(1) NOTICE TO SIPC.—If the Commission or any self-regulatory organization is aware of facts which lead it to believe that any broker or dealer subject to its regulation is in or is approaching financial difficulty, it shall immediately notify SIPC, and, if such notification is by a self-regulatory organization, the Commission.

(2) ACTION BY SIPC.—If SIPC determines that any member has failed or is in danger of failing to meet its obligations to

customers and that there exists one or more of the conditions specified in subsection (b)(1)(A), SIPC, upon notice to such member, may apply to any court of competent jurisdiction specified in section 27 or 21(e) of the 1934 Act for a decree adjudicating that customers of such member are in need of the protection provided by this Act.

48 Stat. 902, 900. 15 USC 78aa, 78u.

(3) EFFECT OF OTHER PENDING ACTIONS.—An application under paragraph (2)—

(A) with the consent of the Commission, may be combined with any action brought by the Commission including an action by it for a temporary receiver pending an appointment of a trustee under subsection (b)(3), and

(B) may be filed notwithstanding the pendency in the same or any other court of any bankruptcy, mortgage foreclosure, or equity receivership proceeding or any proceeding to reorganize, conserve, or liquidate such member or its property, or any proceeding to enforce a lien against property of such member.

(b) COURT ACTION.—

(1) ISSUANCE OF DECREE.—

(A) FINDINGS BY COURT.—A court to which application is made pursuant to subsection (a)(2) shall grant the application and issue a decree adjudicating that customers of the member named in the application are in need of protection under this Act if it finds that such member—

(i) is insolvent within the meaning of section 1(19) of the Bankruptcy Act, or is unable to meet its obligations as they mature, or

52 Stat. 841. 11 USC 1.

(ii) has committed an act of bankruptcy within the meaning of section 3 of the Bankruptcy Act, or

52 Stat. 844; 66 Stat. 421. 11 USC 21.

(iii) is the subject of a proceeding pending in any court or before any agency of the United States or any State in which a receiver, trustee, or liquidator for such member has been appointed, or

(iv) is not in compliance with applicable requirements under the 1934 Act or rules or regulations of the Commission or any self-regulatory organization with respect to financial responsibility or hypothecation of customers' securities, or

48 Stat. 881. 15 USC 78a.

(v) is unable to make such computations as may be necessary to establish compliance with such financial responsibility or hypothecation rules or regulations.

(B) UNCONTESTED, ETC., APPLICATIONS.—If within three business days after the filing of an application pursuant to subsection (a)(2), or such other period as the court may order, the debtor shall consent to or fail to contest such application or shall fail to show facts sufficient to controvert any material allegation of such application, the court shall forthwith grant the application and issue a decree adjudicating that customers of the member named in the application are in need of protection under this Act.

(2) EXCLUSIVE JURISDICTION OVER DEBTOR.—Upon the filing of an application pursuant to subsection (a)(2), the court to which application is made shall have exclusive jurisdiction of the debtor involved and its property wherever located with the powers, to the extent consistent with the purposes of this Act, of a court of bankruptcy and of a court in a proceeding under chapter X of the Bankruptcy Act. Pending an adjudication under para-

52 Stat. 883; 80 Stat. 1278. 11 USC 501.

graph (1) such court shall stay, and upon appointment by it of a trustee as provided in paragraph (3) such court shall continue the stay of, any pending bankruptcy, mortgage foreclosure, equity receivership, or other proceeding to reorganize, conserve, or liquidate the debtor or its property and any other suit against any receiver, conservator, or trustee of the debtor or its property. Pending such adjudication and upon the appointment by it of such trustee, the court may stay any proceeding to enforce a lien against property of the debtor or any other suit against the debtor. Pending such adjudication, such court may appoint a temporary receiver.

(3) APPOINTMENT OF TRUSTEE.—If the court grants an application and makes an adjudication under paragraph (1), the court shall forthwith appoint as trustee for the liquidation of the business of the debtor in accordance with section 6, and as attorney for such trustee, such persons as SIPC shall specify. No person shall be appointed as such trustee or attorney if such person is not "disinterested" within the meaning of section 158 of the Bankruptcy Act. 52 Stat. 888.

(4) DEBTOR AND FILING DATE DEFINED.—For purposes of this Act— 11 USC 558.

(A) DEBTOR.—The term "debtor" means a member of SIPC in respect of whom an application has been filed pursuant to subsection (a)(2).

(B) FILING DATE.—The term "filing date" means the date on which an application with respect to any debtor is filed under subsection (a)(2); except that if—

(i) a petition was filed before such date by or against the debtor under the Bankruptcy Act, or 30 Stat. 544.

(ii) the debtor is the subject of a proceeding pending in any court or before any agency of the United States or any State in which a receiver, trustee, or liquidator for such debtor was appointed which proceeding was commenced before the date on which such application was filed, 11 USC 1 et seq.

then the term "filing date" means the date on which such petition was filed or such proceeding commenced.

(c) SEC PARTICIPATION IN PROCEEDINGS.—The Commission may, on its own motion, file notice of its appearance in any proceeding under this Act and may thereafter participate as a party.

SEC. 6. LIQUIDATION PROCEEDINGS.

(a) GENERAL PURPOSES OF LIQUIDATION PROCEEDING.—The purposes of any proceeding in which a trustee has been appointed under section 5(b)(3) (hereafter in this section referred to as a "liquidation proceeding") shall be:

(1) as promptly as possible after such appointment and in accordance with the provisions of this section—

(A) to return specifically identifiable property to the customers of the debtor entitled thereto;

(B) to distribute the single and separate fund, and (in advance thereof or concurrently therewith) pay to customers moneys advanced by SIPC, as provided in subsection (f);

(2) to operate the business of the debtor in order to complete open contractual commitments of the debtor pursuant to subsection (d);

(3) to enforce rights of subrogation as provided in this Act; and

(4) to liquidate the business of the debtor.

(b) POWERS AND DUTIES OF TRUSTEE.—

(1) TRUSTEE POWERS.—A trustee appointed under section 5(b)(3) (hereinafter referred to as "trustee") shall be vested with the same powers and title with respect to the debtor and the property of the debtor, and the same rights to avoid preferences, as a trustee in bankruptcy and a trustee under chapter X of the Bankruptcy Act have with respect to a bankrupt and a chapter X debtor. In addition, a trustee shall have the right—

52 Stat. 883; 80 Stat. 1278. 11 USC 501.

(A) with the approval of SIPC, to hire and fix the compensation of all personnel (including officers and employees of the debtor and of its examining authority) and other persons (including but not limited to accountants) that are deemed by such trustee necessary for all or any purposes of the liquidation proceeding, and

(B) to operate the business of the debtor in order to complete open contractual commitments pursuant to subsection (d),

and no approval of the court shall be required therefor.

(2) TRUSTEE DUTIES.—Except as inconsistent with the provisions of this Act or otherwise ordered by the court, a trustee shall be subject to the same duties as a trustee appointed under section 44 of the Bankruptcy Act, except that a trustee may, but shall have no duty to, reduce to money any securities in the single and separate fund (provided under subsection (c)(2)(B)) or in the general estate of the debtor.

52 Stat. 860; 54 Stat. 836. 11 USC 72.

(c) APPLICATION OF BANKRUPTCY ACT.—

(1) GENERAL PROVISIONS APPLICABLE.—Except as inconsistent with the provisions of this Act and except that in no event shall a plan of reorganization be formulated, a liquidation proceeding shall be conducted in accordance with, and as though it were being conducted under, the provisions of chapter X and such of the provisions (other than section 60e) of chapters I to VII, inclusive, of the Bankruptcy Act as section 102 of chapter X would make applicable if an order of the court had been entered directing that bankruptcy be proceeded with pursuant to the provisions of such chapters I to VII, inclusive: except that the court may, for such period as may be appropriate, stay enforcement of, but shall not abrogate, the rights provided in section 68 of the Bankruptcy Act and the right to enforce a valid, non-preferential lien or pledge against the property of the debtor. For purposes of applying the Bankruptcy Act in carrying out this section, any reference in the Bankruptcy Act to the date of commencement of proceedings under the Bankruptcy Act shall be deemed to be a reference to the filing date (as defined in section 5(b)(4)(B)).

11 USC 96. 52 Stat. 840-872. 11 USC 1-101. 11 USC 108.

(2) SPECIAL PROVISIONS.—The following subparagraphs of this paragraph shall apply to a liquidation proceeding in lieu of section 60e of the Bankruptcy Act:

11 USC 96.

(A) DEFINITIONS.—Except as otherwise expressly provided in this section, for purposes of this section and the application of the Bankruptcy Act to a liquidation proceeding—

(i) "property" includes cash and securities, whether or not negotiable and all property of a similar character;

(ii) "customers" of a debtor means persons (including persons with whom the debtor deals as principal or agent) who have claims on account of securities received, acquired, or held by the debtor from or for the account of such persons (I) for safekeeping, or (II) with a

view to sale, or (III) to cover consummated sales, or (IV) pursuant to purchases, or (V) as collateral security, or (VI) by way of loans of securities by such persons to the debtor, and shall include persons who have claims against the debtor arising out of sales or conversions of such securities, and shall include any person who has deposited cash with the debtor for the purpose of purchasing securities, but shall not include any person to the extent that such person has a claim for property which by contract, agreement, or understanding, or by operation of law, is part of the capital of the debtor or is subordinated to the claims of creditors of the debtor;

(iii) "cash customer" means, with respect to any securities or cash, customers entitled to immediate possession of such securities or cash without the payment of any sum to the debtor, and for purposes of this clause, the same person may be a cash customer with reference to certain securities or cash and not a cash customer with reference to other securities or cash;

(iv) "net equity" of a customer's account or accounts means the dollar amount thereof determined by giving effect to open contractual commitments completed as provided in subsection (d), by excluding any specifically identifiable property reclaimable by the customer, and by subtracting the indebtedness, if any, of the customer to the debtor from the sum which would have been owing by the debtor to the customer had the debtor liquidated, by sale or purchase on the filing date, all other securities and contractual commitments of the customer, and for purposes of this definition, accounts held by a customer in separate capacities shall be deemed to be accounts of separate customers; and

(v) "securities" has the same meaning as such term has under section 60e of the Bankruptcy Act. 52 Stat. 870. 11 USC 96.

(B) SINGLE AND SEPARATE FUND.—All property at any time received, acquired, or held by or for the account of a debtor from or for the account of customers except cash customers who are able to identify specifically their property in the manner prescribed in subparagraph (C), and the proceeds of all customers' property transferred by the debtor, including property unlawfully converted, shall constitute a single and separate fund; and all customers except such cash customers shall constitute a single and separate class of creditors, entitled to share ratably in such fund on the basis of their respective net equities as of the filing date and in priority to all other payments, except that (i) there shall be repaid to SIPC, in priority to all other claims payable from such single and separate fund, the amount of all advances made by SIPC to the trustee to permit the completion of open contractual commitments pursuant to subsection (d), and (ii) to the extent that any other assets of the debtor may be available therefor or as otherwise ordered by the court, all costs and expenses specified in clauses (1) and (2) of section 64a of the Bankruptcy Act shall be paid from such single and separate fund in priority to the claims of such single and separate class of creditors, and any moneys advanced by SIPC for such costs and expenses shall be recouped as such. If such single and separate fund shall not be sufficient to pay in full the 52 Stat. 874; 76 Stat. 571. 11 USC 104.

claims of such single and separate class of creditors, the creditors of such class shall be entitled, to the extent only of their respective unpaid balances, to share in the general estate with general creditors. In, or for the purpose of, distributing such fund, all property other than cash shall be valued as of the close of business on the filing date. To the greatest extent considered practicable by the trustee, the trustee shall deliver in payment of claims of customers for their net equities based upon securities held on the filing date in their accounts (after giving effect to open contractual commitments completed as hereinafter provided), securities of the same class and series of an issuer ratably up to the respective amounts which were so held in such accounts. Any property remaining after the liquidation of a lien or pledge made by a debtor shall be apportioned between his general estate and the single and separate fund in the proportion in which the general property of the debtor and the property of his customers contributed to such lien or pledge.

(C) SPECIFICALLY IDENTIFIABLE PROPERTY.—The trustee shall return specifically identifiable property to the customers of the debtor, entitled thereto. No cash or securities at any time received, acquired, or held by or for the account of a debtor from or for the accounts of customers shall for the purposes of this paragraph be deemed to be specifically identified, unless such property remained in its identical form in the debtor's possession until the filing date, or unless such property was allocated to or physically set aside for such customers on the filing date. In determining whether property was allocated to or physically set aside for such customers, it shall be sufficient that on the filing date:

(i) securities are segregated individually, or in bulk for customers collectively;

(ii) in the case of securities held for the account of the debtor as part of any central certificate service of any clearing corporation or any similar depositary—

(I) the records of the debtor show or there is otherwise established to the satisfaction of the trustee that all or a specified part of the securities held by such clearing corporation or other similar depositary are held for specified customers, or for customers collectively, and

(II) such records of the debtor also show or there is otherwise established to the satisfaction of the trustee the identities of the particular customers entitled to receive specified numbers or units of such securities so held for customers collectively; or

(iii) such property is held for the account of customers of the debtor in such other manner as the Commission, for the protection of customers and other creditors on a fair and equitable basis, by rule or regulation shall have determined to be sufficiently identifiable as the property of such customers.

If there is any shortage in securities of the same class and series of an issuer so segregated in bulk or otherwise held for customers pursuant to this subparagraph, as compared to the aggregate rights of particular customers to receive securities of such class and series, the respective interests of such customers in such securities of such class and series shall

be prorated, without prejudice, however, to the satisfaction of any claim for deficiencies as otherwise provided in this section.

(D) Where such single and separate fund is not sufficient to pay in full the claims of such single and separate class of creditors, a transfer by a debtor of any property which, except for such transfer, would have been a part of such fund may be recovered by the trustee for the benefit of such fund, if such transfer is voidable or void under the provisions of the Bankruptcy Act. For the purpose of such recovery, the property so transferred shall be deemed to have been the property of the debtor and, if such transfer was made to a customer or for his benefit, such customer shall be deemed to have been a creditor, the laws of any State to the contrary notwithstanding. Subject to the provisions of paragraph (D), if any securities received or acquired by a debtor from a cash customer are transferred by the debtor, such customer shall not have any specific interest in or specific right to any securities of like kind on hand on the filing date, but such securities of like kind or the proceeds thereof shall become part of such single and separate fund.

30 Stat. 544, 11 USC 1 et seq.

(d) COMPLETION OF OPEN CONTRACTURAL COMMITMENTS.—The trustee shall complete those contractual commitments of the debtor relating to transactions in securities which were made in the ordinary course of debtor's business and which were outstanding on the filing date—

(1) in which a customer had an interest, except those commitments the completion of which the Commission shall have determined by rule or regulation not to be in the public interest, or

(2) in which a customer did not have an interest, to the extent that the Commission shall by rule or regulation have determined the completion of such commitments to be in the public interest.

For purposes of this subsection (but not for any other purpose of this Act) (i) the term "customer" means any person other than a broker or dealer, and (ii) a customer shall be deemed to have had an interest in a transaction if a broker participating in the transaction was acting as agent for a customer, or if a dealer participating in the transaction held a customer's order which was to be executed as a part of the transaction. All property at any time received, acquired, or held by or for the account of the debtor (except for cash or securities that are specifically identifiable as the property of particular customers and are not the subject of an open contractual commitment), and all property in the single and separate fund, shall be available to complete open contractual commitments pursuant to this subsection. Securities purchased or cash received by the trustee upon completion of any such commitment shall constitute specifically identifiable property of a customer to the extent that such commitment was completed with property which constituted specifically identifiable property of such customer on the filing date, or was paid or delivered by or for the account of such customer to the debtor or the trustee after the filing date.

"Customer."

(e) NOTICE.—Promptly after his appointment, the trustee shall cause notice of the commencement of proceedings under this section to be published in accordance with a designation of the court, made in accordance with the requirements of section 28 of the Bankruptcy Act, and at the same time shall cause to be mailed a copy of such notice to each of the customers of the debtor as their addresses shall appear from the debtor's books and records. Except as the trustee may other-

52 Stat. 855, 11 USC 51.

wise permit, claims for specifically identifiable property (other than securities registered in the name of the claimant or segregated for him in his individual name) or claims payable from property in the single and separate fund or payable with moneys advanced by SIPC, shall not be paid other than from the general estate of the debtor unless filed within such period of time (not exceeding sixty days after such publication) as may be fixed by the court, and no claim shall be allowed after the time specified in section 57 of the Bankruptcy Act. Subject to the foregoing, and without limiting the powers and duties of the trustee to discharge promptly obligations as specified in this section, the court may make appropriate provision for proof and enforcement of all claims against the debtor including those of any subrogee.

52 Stat. 866; 76 Stat. 570. 11 USC 93.

(f) SIPC ADVANCES TO TRUSTEE.—

(1) ADVANCES FOR CUSTOMERS' CLAIMS.—In order to provide for prompt payment and satisfaction of the net equities of customers of debtor, SIPC shall advance to the trustee such moneys as may be required to pay or otherwise satisfy claims in full of each customer, but not to exceed $50,000 for such customer; except that—

(A) insofar as all or any portion of the net equity of a customer is a claim for cash, as distinct from securities, the amount advanced by reason of such claim to cash shall not exceed $20,000;

(B) a customer who holds accounts with the debtor in separate capacities shall be deemed to be a different customer in each capacity;

(C) no such advance shall be made by SIPC to the trustee to pay or otherwise satisfy, directly or indirectly, any claims of any customer who is a general partner, officer, or director of the debtor, the beneficial owner of 5 per centum or more of any class of equity security of the debtor (other than a nonconvertible stock having fixed preferential dividend and liquidation rights) or limited partner with a participation of 5 per centum or more in the net assets or net profits of the debtor; and

(D) no such advance shall be made by SIPC to the trustee to pay or otherwise satisfy claims of any customer who is a broker or dealer or bank other than to the extent that it shall be established to the satisfaction of the trustee, from the books and records of the debtor or from the books and records of a broker or dealer or bank or otherwise, that claims of such broker or dealer or bank against the debtor arise out of transactions for customers of such broker or dealer or bank, in which event, each such customer of such broker or dealer or bank shall be deemed a separate customer of the debtor.

To the extent that moneys are advanced by SIPC to the trustee to pay the claims of customers, SIPC shall be subrogated to the claims of such customers with the rights and priorities provided in this section.

(2) OTHER ADVANCES.—SIPC may advance to the trustee such moneys as may be required to effectuate subsection (b)(1)(A). SIPC shall advance to the trustee such moneys as (with those available pursuant to subsection (d)) may be required to effectuate subsection (d).

(g) PAYMENTS TO CUSTOMERS; NO PROOF OF CLAIM REQUIRED.—It shall be the duty of the trustee to discharge promptly, in accordance with the provisions of this section, all obligations of the debtor to each of its customers relating to, or net equities based upon, securities or cash by the delivery of securities or the effecting of payments to such

customer (subject to subsection (f)(1), to the extent that such payments are made out of advances from SIPC under such subsection) insofar as such obligations are ascertainable from the books and records of the debtor or are otherwise established to the satisfaction of the trustee, whether or not such customer shall have filed formal proof of such claim. For that purpose the court among other things shall—

(1) in respect of claims relating to securities or cash, authorize the trustee to make payment out of moneys made available to the trustee by SIPC notwithstanding the fact that there shall not have been any showing or determination that there are sufficient funds of the debtor available to make such payment; and

(2) in respect of claims relating to, or net equities based upon, securities of a class and series of an issuer, which are ascertainable from the books and records of the debtor or are otherwise established to the satisfaction of the trustee, authorize the trustee to deliver securities of such class and series if and to the extent available to satisfy such claims in whole or in part, with partial deliveries to be made pro rata to the greatest extent considered practicable by the trustee.

Any payment or delivery of property pursuant to this subsection may be conditioned upon the trustee requiring claimants to execute in a form to be determined by the trustee, appropriate receipts, supporting affidavits, and assignments, but shall be without prejudice to the right of any claimant to file formal proof of claim within the period specified in subsection (e) for any balance of securities or cash to which he may deem himself entitled.

(h) PROOF OF CLAIM BY ASSOCIATES AND OTHERS.—The provisions of this section permitting discharge of obligations of the debtor to pay cash or to deliver securities without formal proof of claim shall not apply to any person "associated" with the debtor as defined in section 3(a)(18) of the 1934 Act, to any beneficial owner of 5 per centum or more of the voting stock of the debtor, or to any member of the immediate family of any of the foregoing. 78 Stat. 565. 15 USC 78c.

(i) REPORTS BY TRUSTEE TO COURT.—All reports to the court by a trustee (other than reports required to be filed pursuant to section 167(3) of the Bankruptcy Act) shall be in such form and detail as, having due regard to the requirements of section 17 of the 1934 Act and the rules and regulations thereunder and the magnitude of items and transactions involved in connection with the operations of a broker or dealer, the Commission shall determine by rules and regulations to present fairly the results of such proceeding as at the dates or for the periods covered by such reports. 52 Stat. 890. 11 USC 567. 48 Stat. 897; 52 Stat. 1076. 15 USC 78q.

(j) EFFECT OF ACT ON CLAIMS.—Except as otherwise provided in this section, nothing in this section shall limit the right of any person to establish by formal proof such claims as such person may have to payment, or to delivery of specific securities, without resort to moneys advanced by SIPC to the trustee.

SEC. 7. SEC FUNCTIONS.

(a) ADMINISTRATIVE PROCEDURE.—Determinations of the Commission, for purposes of making rules or regulations pursuant to section 3(e) and section 9(f) shall be after appropriate notice and opportunity for a hearing, and for submission of views of interested persons, in accordance with the rulemaking procedures specified in section 553 of title 5, United States Code, but the holding of a hearing shall not prevent adoption of any such rule or regulation upon expiration of the notice period specified in subsection (d) of such section and shall not be required to be on a record within the meaning of subchapter II of chapter 5 of such title. 80 Stat. 383. 5 USC 551.

(b) ENFORCEMENT OF ACTIONS.—In the event of the refusal of SIPC to commit its funds or otherwise to act for the protection of customers of any member of SIPC, the Commission may apply to the district court of the United States in which the principal office of SIPC is located for an order requiring SIPC to discharge its obligations under this Act and for such other relief as the court may deem appropriate to carry out the purposes of this Act.

(c) EXAMINATIONS AND REPORTS.—

(1) EXAMINATION OF SIPC, ETC.—The Commission may make such examinations and inspections of SIPC and require SIPC to furnish it with such reports and records or copies thereof as the Commission may consider necessary or appropriate in the public interest or to effectuate the purposes of this Act.

(2) REPORTS FROM SIPC.—As soon as practicable after the close of each fiscal year, SIPC shall submit to the Commission a written report relative to the conduct of its business, and the exercise of the other rights and powers granted by this Act, during such fiscal year. Such report shall include financial statements setting forth the financial position of SIPC at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year. The financial statements so included shall be examined by an independent public accountant or firm of independent public accountants, selected by SIPC and satisfactory to the Commission, and shall be accompanied by the report thereon of such accountant or firm. The Commission shall transmit such report to the President and the Congress with such comment thereon as the Commission may deem appropriate.

Report, transmittal to President and Congress.

(d) FINANCIAL RESPONSIBILITY.—Section 15(c)(3) of the Securities Exchange Act of 1934 is amended to read as follows:

52 Stat. 1075. 15 USC 78o.

"(3) No broker or dealer shall make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest or for the protection of investors to provide safeguards with respect to the financial responsibility and related practices of brokers and dealers including, but not limited to, the acceptance of custody and use of customers' securities, and the carrying and use of customers' deposits or credit balances. Such rules and regulations shall require the maintenance of reserves with respect to customers' deposits or credit balances, as determined by such rules and regulations."

SEC. 8. EXAMINING AUTHORITY FUNCTIONS.

Each member of SIPC shall file with such member's examining authority such information (including reports of, and information with respect to, the gross revenues from the securities business of such member, including the composition thereof, transactions in securities effected by such member, and other information with respect to such member's activities, whether in the securities business or otherwise, including customer accounts maintained, net capital employed, and activities conducted) as SIPC may determine to be necessary or appropriate for the purpose of making assessments under section 4. The examining authority shall file with SIPC all or such part of such information (and such compilations and analyses thereof) as SIPC, by bylaw or rule, shall prescribe. No application, report, or document filed pursuant to this section shall be deemed to be filed pursuant to section 18 of the 1934 Act.

48 Stat. 897. 15 USC 78r.

SEC. 9. FUNCTIONS OF SELF-REGULATORY ORGANIZATIONS.

(a) COLLECTING AGENT.—Each self-regulatory organization shall act as collection agent for SIPC to collect the assessments payable by all members of SIPC for whom such self-regulatory organization is the examining authority, and members of SIPC who are not members of any self-regulatory organization shall make payment direct to SIPC. An examining authority shall be obligated to remit to SIPC assessments made under section 4 only to the extent that payments of such assessments are received by such examining authority.

(b) IMMUNITY.—No self-regulatory organization shall have any liability to any person for any action taken or omitted in good faith pursuant to section 5(a)(1).

(c) INSPECTIONS.—The self-regulatory organization of which a member of SIPC is a member shall inspect or examine such member for compliance with applicable financial responsibility rules, except that if a member of SIPC is a member of more than one self-regulatory organization, SIPC shall designate one of such self-regulatory organizations to inspect or examine such member of SIPC for compliance with applicable financial responsibility rules. Such self-regulatory organization shall be selected by SIPC on the basis of regulatory procedures employed, availability of staff, convenience of location, and such other factors as SIPC may consider appropriate for the protection of customers of its members.

(d) REPORTS.—There shall be filed with SIPC by the self-regulatory organizations such reports of inspections or examinations of the members of SIPC (or copies thereof) as may be designated by SIPC by bylaw or rule.

(e) CONSULTATION.—SIPC shall consult and cooperate with the self-regulatory organizations toward the end:

(1) that there may be developed and carried into effect procedures reasonably designed to detect approaching financial difficulty upon the part of any member of SIPC;

(2) that, as nearly as may be practicable, examinations to ascertain whether members of SIPC are in compliance with applicable financial responsibility rules will be conducted by the self-regulatory organizations under appropriate standards (both as to method and scope) and reports of such examinations will, where appropriate, be standard in form; and

(3) that, as frequently as may be practicable under the circumstances, each member of SIPC will file financial information with, and be examined by, the self-regulatory organization which is the examining authority for such member.

(f) FINANCIAL CONDITION OF MEMBERS.—Notwithstanding the limitations contained in sections 15A and 19 of the 1934 Act and without limiting its powers under those or other sections of the 1934 Act, the Commission may by such rules or regulations as it determines to be necessary or appropriate in the public interest and to effectuate the purposes of this Act— 52 Stat. 1070; 78 Stat. 574. 48 Stat. 898; 82 Stat. 453. 15 USC 78o-3, 78s.

(1) require any self-regulatory organization to adopt any specified alteration of or supplement to its rules, practices, and procedures with respect to the frequency and scope of inspections and examinations relating to the financial condition of members of such self-regulatory organization and the selection and qualification of examiners;

(2) require any self-regulatory organization to furnish SIPC and the Commission with reports and records or copies thereof relating to the financial condition of members of such self-regulatory organization; and

(3) require any self-regulatory organization to inspect or examine any members of such self-regulatory organization in relation to the financial condition of such members. In the case of a broker or dealer who is a member of more than one self-regulatory organization the Commission, to the extent practicable, shall avoid requiring duplication of examinations, inspections, and reports.

SEC. 10. PROHIBITED ACTS.

(a) FAILURE TO PAY ASSESSMENT, ETC.—If a member of SIPC shall fail to file any report or information required pursuant to this Act, or shall fail to pay when due all or any part of an assessment made upon such member pursuant to this Act, and such failure shall not have been cured, by the filing of such report or information or by the making of such payment, together with interest thereon, within five days after receipt by such member of written notice of such failure given by or on behalf of SIPC, it shall be unlawful for such member, unless specifically authorized by the Commission, to engage in business as a broker or dealer. If such member denies that he owes all or any part of the amount specified in such notice, he may after payment of the full amount so specified commence an action against SIPC in the appropriate United States district court to recover the amount he denies owing.

(b) ENGAGING IN BUSINESS AFTER APPOINTMENT OF TRUSTEE.—It shall be unlawful for any broker or dealer for whom a trustee has been appointed pursuant to this Act to engage thereafter in business as a broker or dealer, unless the Commission otherwise determines in the public interest. The Commission may by order bar or suspend for any period, any officer, director, general partner, owner of 10 per centum or more of the voting securities, or controlling person of any broker or dealer for whom a trustee has been appointed pursuant to this Act from being or becoming associated with a broker or dealer, if after appropriate notice and opportunity for hearing, the Commission shall determine such bar or suspension to be in the public interest.

(c) EMBEZZLEMENT, ETC., OF ASSETS OF SIPC.—Whoever steals, unlawfully abstracts, unlawfully and willfully converts to his own use or to the use of another, or embezzles any of the moneys, securities, or other assets of SIPC shall be fined not more than $50,000 or imprisoned not more than five years or both.

SEC. 11. MISCELLANEOUS PROVISIONS.

(a) PUBLIC INSPECTION OF REPORTS.—Any notice, report, or other document filed with SIPC pursuant to this Act shall be available for public inspection unless SIPC or the Commission shall determine that disclosure thereof is not in the public interest. Nothing herein shall act to deny documents or information to the Congress of the United States or the committees of either House having jurisdiction over financial institutions, securities regulation, or related matters under the rules of each body. Nor shall the Commission be denied any document or information which the Commission, in its judgment, needs.

(b) APPLICATION OF ACT TO FOREIGN MEMBERS.—Except as otherwise provided by rule or regulation of the Commission, if the head office of a member is located, and the member's principal business is conducted, outside the United States, the provisions of this Act shall apply to such member only in respect of the business of such member conducted in the United States.

(c) LIABILITY OF MEMBERS OF SIPC.—Except for such assessments as may be made upon such member pursuant to the provisions of section 4, no member of SIPC shall have any liability under this Act as a member of SIPC for, or in connection with, any act or omission

of any other broker or dealer whether in connection with the conduct of the business or affairs of such broker or dealer or otherwise and, without limiting the generality of the foregoing, no member shall have any liability for or in respect of any indebtedness or other liability of SIPC.

(d) LIABILITY OF SIPC AND DIRECTORS.—Neither SIPC nor any of its Directors shall have any liability to any person for any action taken or omitted in good faith under or in connection with any matter contemplated by this Act.

(e) ADVERTISING.—SIPC shall by bylaw or rule prescribe the manner in which a member of SIPC may display any sign or signs (or include in any advertisement a statement) relating to the protection to customers and their accounts, or any other protections, afforded under this Act. No member may display any such sign, or include in an advertisement any such statement, except in accordance with such bylaws and rules.

(f) SIPC EXEMPT FROM TAXATION.—SIPC, its property, its franchise, capital, reserves, surplus, and its income, shall be exempt from all taxation now or hereafter imposed by the United States or by any State or local taxing authority, except that any real property and any tangible personal property (other than cash and securities) of SIPC shall be subject to State and local taxation to the same extent according to its value as other real and tangible personal property is taxed. Assessments made upon a member of SIPC shall constitute ordinary and necessary expenses in carrying on the business of such member for the purpose of section 162(a) of the Internal Revenue Code of 1954. The contribution and transfer to SIPC of funds or securities held by any trust established by a national securities exchange prior to January 1, 1970, for the purpose of providing assistance to customers of members of such exchange, shall not result in any taxable gain to such trust or give rise to any taxable income to any member of SIPC under any provision of the Internal Revenue Code of 1954, nor shall such contribution or transfer, or any reduction in assessments made pursuant to this Act, in any way affect the status, as ordinary and necessary expenses under section 162(a) of the Internal Revenue Code of 1954, of any contributions made to such trust by such exchange at any time prior to such transfer. Upon dissolution of SIPC, none of its net assets shall inure to the benefit of any of its members.

68A Stat. 45; 83 Stat. 710. 26 USC 162.

68A Stat. 3. 26 USC 1 et seq.

(g) SECTION 20(a) OF 1934 ACT NOT TO APPLY.—The provisions of subsection (a) of section 20 of the 1934 Act shall not apply to any liability under or in connection with this Act.

48 Stat. 899. 15 USC 78t.

(h) SEC STUDY OF UNSAFE OR UNSOUND PRACTICES.—Not later than twelve months after the date of enactment of this Act, the Commission shall compile a list of unsafe or unsound practices by members of SIPC in conducting their business and report to the Congress (1) the steps being taken under the authority of existing law to eliminate those practices and (2) recommendations concerning additional legislation which may be needed to eliminate those unsafe or unsound practices.

Report to Congress.

SEC. 12. DEFINITIONS.

For purposes of this Act:

(1) SELF-REGULATORY ORGANIZATION.—The term "self-regulatory organization" means a national securities exchange or a national securities association registered pursuant to subsection (b) of section 15A of the 1934 Act.

52 Stat. 1070; 78 Stat. 574. 15 USC 78o-3.

(2) FINANCIAL RESPONSIBILITY RULES.—The term "financial responsibility rules" means the rules and regulations pertaining to financial responsibility and related practices which are applicable to a broker or dealer, as prescribed by the Commission under subsection (c)(3) of section 15 of the 1934 Act or prescribed by a national securities exchange.

Ante, p. 1653.

(3) EXAMINING AUTHORITY.—The term "examining authority" means, with respect to any member of SIPC, the self-regulatory organization which inspects or examines such member of SIPC or the Commission if such member of SIPC is not a member of any self-regulatory organization.

Approved December 30, 1970.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 91-1613 (Comm. on Interstate and Foreign Commerce) and No. 91-1788 (Comm. of Conference).
SENATE REPORT No. 91-1218 accompanying S. 2348 (Comm. on Banking and Currency).
CONGRESSIONAL RECORD, Vol. 116 (1970):
Dec. 1, considered and passed House.
Dec. 10, considered and passed Senate, amended, in lieu of S. 2348.
Dec. 21, House agreed to conference report.
Dec. 22, Senate agreed to conference report.

SUPREME COURT, U. S.

Supreme Court, U. S.
FILED

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ROBAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-516

SHERWIN SELIGSOHN,

Petitioner,

v.

SECURITIES INVESTOR PROTECTION CORPORATION, SECURITIES AND EXCHANGE COMMISSION, and CLAUDE P. HUDSON, Trustee,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

JOINT BRIEF IN OPPOSITION OF RESPONDENTS SECURITIES INVESTOR PROTECTION CORPORATION AND CLAUDE P. HUDSON, TRUSTEE

THEODORE H. FOCHT
General Counsel
Securities Investor Protection Corporation
900 Seventeenth Street, N. W.
Suite 800
Washington, D. C. 20006
Tel.: 202—223-8400

Of Counsel:
WILFRED R. CARON
Associate General Counsel
Securities Investor Protection Corporation

JOHN BIGGS III,
Counsel for Claude P. Hudson, Trustee
Farmers Bank Building
Wilmington, Delaware 19801
Tel.: 302—655-9677

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Opinion Below

The unanimous opinion of the Court of Appeals is reported as Securities and Exchange Commission *v.* Aberdeen Securities Co., Inc., 480 F.2d 1121 (3d Cir. 1973). The District Court ruled from the Bench but wrote no opinion.

Jurisdiction

Respondents Securities Investor Protection Corporation ("SIPC") and Claude P. Hudson, Trustee ("Trustee") (hereinafter jointly referred to as "Respondents")[1] respectfully stress that the decision of the Court of Appeals with respect to Rule 23 of the Federal Rules of Civil Procedure represents a unanimous affirmance of an interlocutory determination involving an exercise of discretion by the District Court (discussed *infra* at page 11).

Statutes Involved

The petition merely sets forth, in Appendices C & D, the entirety of Rule 23 and the Securities Investor Protection Act of 1970 (15 U.S.C. § 78aaa *et seq.*) ("1970 Act"). It does not identify the particular provisions involved.

As regards the petitioner's substantive rights under the 1970 Act, the principal provisions which are directly or indirectly involved are contained in Section 78fff. Because of its length that section is set forth in the Appendix hereto (pages 4a to 16a), pursuant to Rule 40(1)(c) of this Court. The provisions which the Court of Appeals (and the Respondents) considered controlling in the circumstances of this case are subdivisions (c)(2)(A)(iv) and (g). Subdivision (g) provides, in part:

> "It shall be the duty of the trustee to discharge promptly, in accordance with the provisions of this section, all obligations of the debtor to each of its customers relating to, *or net equities based upon*, securities or cash *by the delivery of securities or the effecting of payments* to such customer (subject to subsection (f)(1), to the extent that such payments

1. Respondent Securities and Exchange Commission did not participate in the appeal to the Court of Appeals.

> are made out of advances from SIPC under such subsection) insofar as such obligations are ascertainable from the books and records of the debtor or are otherwise established to the satisfaction of the trustee, whether or not such customer shall have filed formal proof of such claim . . . ." (emphasis added)

Subdivision (c)(2)(A)(iv) provides:

> "(iv) 'net equity' of a customer's account or accounts means the dollar value thereof determined by giving effect to open contractual commitments completed as provided in subsection (d), by excluding any specifically identifiable property reclaimable by the customer, and by subtracting the indebtedness, if any, of the customer to the debtor from the sum which would have been owing by the debtor to the customer had the debtor liquidated, by sale or purchase on the filing date, all other securities and contractual commitments of the customer, and for purposes of this definition, accounts held by a customer in separate capacities shall be deemed to be accounts of separate customers . . . ."

The petitioner, however, relies upon Section 78fff(d) which provides, in pertinent part:

> "(d) COMPLETION OF OPEN CONTRACTURAL (*sic*) COMMITMENTS.—The trustee shall complete those contractual commitments of the debtor relating to transactions in securities which were made in the ordinary course of debtor's business and which were outstanding on the filing date—
>
> (1) in which a customer had an interest, except those commitments the completion of which the Commission shall have determined by rule or regulation not to be in the public interest, or
>
> (2) in which a customer did not have an interest, to the extent that the Commission shall by

> rule or regulation have determined the completion of such commitments to be in the public interest.
>
> For purposes of this subsection (but not for any other purposes of this Act) (i) the term "customer" means any person other than a broker or dealer, and (ii) a customer shall be deemed to have had an interest in a transaction if a broker participating in the transaction was acting as agent for a customer, or if a dealer participating in the transaction held a customer's order which was to be executed as a part of the transaction. . . ."

Regarding Rule 23, in the courts below the petitioner relied upon subdivision (a) which sets forth prerequisites to all class actions, and subdivisions (b) (1) (B) and (b) (3) which set forth additional conditions to the maintenance of a class suit. Should this issue be reached on the merits it would also be essential to consider the nature of a liquidation proceeding under the 1970 Act which in addition to establishing special procedures also incorporates by reference considerable portions of the Bankruptcy Act. The relevant provisions are contained in Sections 78eee and 78fff of the 1970 Act, both of which are set forth in full in the Appendix hereto.

Questions Presented

(1) Whether this Court should review the decision of the Court of Appeals that the 1970 Act, in particular Section 78fff(d), was not intended to require a trustee to acquire securities in the market in order to satisfy the "net equity" claims of customers based on securities owed them by the broker-dealer in liquidation but which were in fact not among the broker-dealer's assets which came into the trustee's possession.

(2) Whether the judgment of the Court of Appeals, insofar as it unanimously affirmed the District Court's refusal to invoke Rule 23 of the Federal Rules of Civil Procedure as a matter of law and in the exercise of discretion should be reviewed by this Court.

Statement of the Case

Petitioner's statement of the case is correct except that the record does not support the following immaterial statement on page 3 of the petition: "No authority was given to hold stock in street name." In the interest of completeness the following should be added, however.

The petitioner was one of four customers who claimed an aggregate of 1300 Oratronics units. Pursuant to the order of the District Court the trustee made a pro rata distribution to these customers of the 100 units found in the debtor's possession, and paid them cash in lieu of securities in order to satisfy the balance of their net equity claims, as follows:

Customers	Securities Positions	Securities Delivered	Cash Paid in Lieu
R. Marsh	200 units	15 units	$ 624.28
S. & L. Rabin	500 units	39 units	$1,555.88
S. Seligsohn	400 units	31 units	$1,245.88
N. Sabatini	200 units	15 units	$ 624.38

The amounts of cash were based upon the value of Oratronics units as of the "filing date" in accordance with Section 78fff (c) (2) (A) (iv).

Reasons For Denying The Writ

I.

The petition is devoid of meaningful argument and should be denied under this Court's Rule 23(4).

The petition does not present any analysis of relevant statutes or cases in order to demonstrate error below. It merely contains some general remarks of members of Congress, quotes a misleading segment of former SEC Chairman Budge's testimony (discussed *infra* at page 11), and suggests generally that the 1970 Act, as construed by the Court of Appeals, does not sufficiently protect public securities customers. Moreover, the entire subject of Rule 23 is ignored except for the naked assertion of the existence of an issue under "Questions Presented". This seems a most appropriate case in which to apply this Court's Rule 23(4) which permits the denial of a petition on account of "[t]he failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration. . . ."

In light of the condition of the petition, it would be sufficient for the Respondents to place complete reliance upon the well-reasoned opinion of the Court of Appeals. However, it seems appropriate to supplement that opinion in light of the novel character of the 1970 Act and the issues herein.

II.

The Court of Appeals properly applied the 1970 Act, and no reasons appear which warrant further review by this Court.

Prior to the 1970 Act stockbroker bankruptcies were conducted in accordance with Section 60e of the Bankruptcy Act [11 U.S.C. § 96(e)]. Section 60e permitted cash customers (as defined) to reclaim cash or securities which could be specifically identified as their property ("specifically identifiable property"). Other customers' cash, securities or similar property constituted a "single and separate fund" to be applied in satisfaction of customers' claims (other than for specifically identifiable property) *on a pro rata basis.* Such customers' claims were for the "net equity" of their accounts—a liquidated sum determined by subtracting the customer's indebtedness to the broker from the sum the broker would have owed the customer had the customer's securities (other than specifically identifiable property) and securities commitments been liquidated on the date of bankruptcy. The unpaid balance of customers' net equities were included among all the claims against the general estate. A more detailed discussion of Section 60e may be found in 3 COLLIER ON BANKRUPTCY ¶¶60.72-60.76, pp. 1166-1201 (14th ed. 1971).

Obviously Section 60e did not prevent customer losses which mounted when the rate of stockbroker failures accelerated in the late 1960's. The Congress responded to the crisis by enacting the 1970 Act which created SIPC, a non-profit membership corporation. The 1970 Act adopts the Section 60e concepts (with some differences not necessary to note here)and continues the right of customers to

receive their specifically identifiable property (as defined) and otherwise to share *ratably* in the single and separate fund based on their net equities [Sections 78fff (c) (2) (A), (B) and (C)].[2] The dramatic difference is the creation of SIPC and the availability of its own funds to satisfy the net equities of customers, within certain limits, notwithstanding the inadequacy of cash or securities in the single and separate fund [Section 78fff (f)]. With the creation of SIPC and its fund it was also possible to add a new

2. The 1970 Act is substantially the same as the bill previously passed by the House of Representatives [Conference Report H.R. No. 91-1788, 91st Cong., 2d Sess. 11 (1970)]. On the aspects pertinent to this appeal both the House and Senate versions were the same [H.R. 19333, 91st Cong., 2d Sess. (1970) and S. 2348, 91st Cong., 2d Sess. (1970)]. The House Report accompanying H.R. 19333 stated:

> "Section 60e provides for the return to customers of fully paid securities which are 'specifically identifiable' as their property. The bill carries forward the 60e concept of specific identification except that, among other things, identification need be made only as of the filing date . . . and except that the bill makes it clear that securities held in bulk segregation or in central certificate services are specifically identifiable. . . .
>
> "Section 60e also provides that property held for customers (other than specifically identifiable property) constitutes a single and separate fund in which customers of the debtor are entitled to share ratably. This concept is carried forward in the bill, except that it is intended that, *to the extent possible*, the trustee will deliver to a customer against his claim for securities, the same securities (that is, securities of the same issuer, class, and series) which were held for his account on the filing date. For purposes of valuing claims of customers for securities and the extent to which they have been discharged, *securities will be valued as of the filing date. To the extent that property in the single and separate fund is insufficient* to discharge claims of customers payable out of that fund, SIPC is required to advance funds to the trustee to discharge such claims. SIPC would not be required to advance more than $50,000 per customer." [H.R. No. 91-1613, 91st Cong., 2d Sess. 10 (1970)] (emphasis added)

The same statement almost *in haec verba* was made in the Senate Report [S.R. No. 91-1218, 91st Cong., 2d Sess. 11-12 (1970).]

area of protection designed to prevent the so-called "domino effect", *i.e.*, the potential which the failure of one broker-dealer has for causing the failure of one or more other broker-dealers with which the failed firm may have substantial open securities transactions. The relevant section in this regard is Section 78fff (d), mistakenly relied on by the petitioner, which authorizes the completion of certain open contractual commitments which were outstanding between the defunct firm and other broker-dealers.

The 1970 Act recognizes that by reason of the unlawful hypothecation or other transfer of customers' securities, and other events usually associated with firms in financial distress, both the single and separate fund and certain classifications of specifically identifiable property would probably be insufficient to permit the return to customers of all their securities positions. With respect to specifically identifiable property, Section 78fff (c) (2) (C) specifically authorizes the distribution of available securities on a pro rata basis "[i]f there is any shortage in securities of the same class and series of an issuer" segregated in bulk or otherwise constituting specifically identifiable property. With regard to net equity claims based on securities, Section 78fff (c) (2) (B) provides that such claimants "constitute a single and separate class of creditors, *entitled to share ratably* in such fund on the basis of their respective net equities" (emphasis added). It further provides that "[i]f such single and separate fund shall not be sufficient" customers are entitled to share in the general estate with general creditors to the extent of the unpaid balance of their respective net equities. Section 78fff (g) (2) authorizes the trustee to deliver securities "to the extent available . . . with partial deliveries to be made pro rata to the greatest extent considered practicable by the trustee".

Other provisions even more persuasively demonstrate that customers having net equity claims may well receive cash in lieu of securities. Thus, Section 78fff (b) (2) specifically gives the trustee discretion to ". . . reduce to money any securities in the single and separate fund. . . ." Section 78fff (c) (2) (B) merely requires the return of securities in the single and separate fund "[t]o the greatest extent considered practicable by the trustee. . . ." Indeed, Section 78fff (c) (2) (D) authorizes the trustee to complete open contractual commitments with other broker-dealers using, if necessary, ". . . all property in the single and separate fund. . . ." And finally, although customers with net equities based on securities have a ratable class interest in the single and separate fund, Section 78fff (c) (2) (B) gives their interest tertiary priority after (i) repayment to SIPC of advances made to complete open contractual commitments under Section 78fff (d), and (ii) the payment of certain costs and expenses of the liquidation proceeding allocable to the single and separate fund.

The Court of Appeals was clearly correct. Under Section 78fff (c) (2) (A) (iv) a customer's net equity is a net "dollar amount" calculated as though the account were liquidated. Whether that liquidated claim will be satisfied by cash or securities, or a combination of both, depends upon the composition of the single and separate fund as the trustee finds it, subject to the trustee's discretion and the effect of the other statutory provisions referred to above. The petitioner's position would render nugatory the plain statutory scheme, a result which familiar rules of statutory construction will not countenance. *Bays Markets, Inc.* v. *Retail Clerk's Union*, 398 U.S. 235, 250 (1970); *N. L. R. B.* v. *Lion Oil Co.*, 352 U.S. 282, 288 (1957); *Mastro Plastics Corp.* v. *N. L. R. B.*, 350 U.S. 270, 286

(1956); *United States* v. *Menasche*, 348 U.S. 528, 538-539 (1955).

As noted earlier there is little in the petition to which to respond. It should be noted that the statement which the petition attributes to former SEC Chairman Budge is incomplete. The complete statement is set forth in footnote 8 to the opinion of the Court of Appeals, and it clearly shows that Chairman Budge said nothing to support the petitioner's view. Chairman Budge gave similar testimony before the Senate Subcommittee on Banking and Currency, and he made clear again that Section 78fff (d) was intended to apply to certain open "interdealer transactions."[3] The petition also states (page 5) that "[t]he impact of the decision below on the public customers of broker-dealers is enormous." The only discernible impact is that the 1970 Act, as correctly applied by the Court of Appeals, has provided the petitioner with substantial benefits which would not have been available before the legislation.

The Respondents submit that the Court of Appeals properly concluded that Congress never intended that Section 78fff (d) be used to satisfy customers' net equities based on securities by requiring the trustee to acquire missing securities in the market. There is no conflict of opinion on this point among the circuits, and no other reason appears which warrants review by this Court.

---

3. "We have also recognized that many interdealer transactions may be for the account of customers. Where this is so, the coverage also applies. The bill would require completion of securities transactions of the debtor broker-dealer made in the ordinary course of its business and outstanding on the date the Corporation petitions the court for the appointment of a trustee, if such transaction involves a customer of the debtor or of another broker or dealer who entered into such transaction on behalf of such customer.

Open transaction between the debtor and other brokers or dealers where neither was acting on behalf of a customer could not be completed by the trustee unless the Commission, by rule or regulation, determined that the completion of such commitments are in the public interest." Hearings on S. 2348, S. 3988 and S. 3989 Before the Subcommittee on Securities of the Senate Committee on Banking and Currency, 91st Cong. 2d Sess. 257 (1970).

III.

The Court of Appeals' unanimous affirmance of the District Court's interlocutory discretionary determination not to invoke Rule 23 of the Federal Rules of Civil Procedure should not be reviewed by this Court.

In view of the petition's inexplicable silence on this point these Respondents will not address the issue tendered in the Court of Appeals. It is evident that the procedures established by the 1970 Act, Section 78fff (c) (1) of which makes applicable various provisions of the Bankruptcy Act, contemplate the actual disposition of the rights of all customers and other creditors. To engraft Rule 23 procedures upon that most adequate statutory scheme would impose burdens and expense without achieving more than the 1970 Act itself achieves. The Respondents rely upon the opinion of the Court of Appeals.

Apart from the patent correctness of the decisions below, other considerations exist which militate against the grant of a writ of certiorari. The determination below involved an exercise of discretion by a district judge, sustained by a unanimous Court of Appeals, with respect to the application of a rule of federal civil procedure. This Court will not ordinarily review such determinations. *Appalachian Power Co.* v. *American Institute of Certified Public Accountants,* 80, S. Ct. 16, *cert. denied,* 361 U.S. 887 (1959). Moreover, the principle has long been established that this Court will not grant a writ of certiorari to review an interlocutory determination except in rare cases involving extraordinary circumstances. *Hamilton-Brown Shoe Co.* v. *Wolf Brothers & Co.,* 240 U.S. 251, 258 (1916); *City and County of Denver* v. *New York Trust Co.,* 229 U.S. 123, 133 (1912); *Forsyth* v. *City of Hammond,* 166 U.S. 506, 514

(1897); *Chicago & N. W. Ry. Co.* v. *Osborne*, 146 U.S. 354, 357 (1892); STERN & GRESSMAN, SUPREME COURT PRACTICE pp. 12-15, 130-131 (2d ed. 1954); ROBERTSON AND KIRKHAM, JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES §130, p. 231 (1951). Such circumstances do not exist here.

CONCLUSION

For the reasons stated above, the Respondents respectfully submit that the petition for a writ of certiorari should be denied.

Respectfully submitted,

THEODORE H. FOCHT
General Counsel
Securities Investor Protection Corporation
900 Seventeenth Street, N. W.
Suite 800
Washington, D. C. 20006
Tel.: 202—223-8400

Of Counsel:
WILFRED R. CARON
Associate General Counsel
Securities Investor Protection Corporation

JOHN BIGGS III,
Counsel for Claude P. Hudson, Trustee
Farmers Bank Building
Wilmington, Delaware 19801
Tel.: 302—655-9677

APPENDIX

SECTIONS 78eee AND 78fff OF THE SECURITIES INVESTOR PROTECTION ACT OF 1970

§ 78eee. Protection of customers

(a) Determination of need of protection.—

(1) Notice to SIPC.—If the Commission or any self-regulatory organization is aware of facts which lead it to believe that any broker or dealer subject to its regulation is in or is approaching financial difficulty, it shall immediately notify SIPC, and, if such notification is by a self-regulatory organization, the Commission.

(2) Action by SIPC.—If SIPC determines that any member has failed or is in danger or failing to meet its obligations to customers and that there exists one or more of the conditions specified in subsection (b) (1) (A) of this section, SIPC, upon notice to such member, may apply to any court of competent jurisdiction specified in section 78aa or 78u(e) of this title for a decree adjudicating that customers of such member are in need of the protection provided by this chapter.

(3) Effect of other pending actions.—An application under paragraph (2)—

(A) with the consent of the Commission, may be combined with any action brought by the Commission including an action by it for a temporary receiver pending an appointment of a trustee under subsection (b) (3) of this section, and

(B) may be filed notwithstanding the pendency in the same or any other court of any bankruptcy, mortgage foreclosure, or equity receivership proceeding or any proceeding to reorganize, conserve,

or liquidate such member or its property, or any proceeding to enforce a lien against property of such member.

(b) Court action.—

(1) Issuance of decree.—

(A) Findings by court.—A court to which application is made pursuant to subsection (a) (2) of this section shall grant the application and issue a decree adjudicating that customers of the member named in the application are in need of protection under this chapter if it finds that such member—

(i) is insolvent within the meaning of section 1(19) of Title 11, or is unable to meet its obligations as they mature, or

(ii) has committed an act of bankruptcy within the meaning of section 21 of Title 11, or

(iii) is the subject of a proceeding pending in any court or before any agency of the United States or any State in which a receiver, trustee, or liquidator for such member has been appointed, or

(iv) is not in compliance with applicable requirements under the 1934 Act or rules or regulations of the Commission or any self-regulatory organization with respect to financial responsibility or hypothecation of customers' securities, or

(v) is unable to make such computations as may be necessary to establish compliance with such financial responsibility or hypothecation rules or regulations.

(B) Uncontested, etc., applications.—If within three business days after the filing of an application pursuant to subsection (a) (2) of this section, or such other period as the court may order, the debtor

shall consent to or fail to contest such application or shall fail to show facts sufficient to controvert any material allegation of such application, the court shall forthwith grant the application and issue a decree adjudicating that customers of the member named in the application are in need of protection under this chapter.

(2) Exclusive jurisdiction over debtor.—Upon the filing of an application pursuant to subsection (a) (2) of this section, the court to which application is made shall have exclusive jurisdiction of the debtor involved and its property wherever located with the powers, to the extent consistent with the purposes of this chapter, of a court of bankruptcy and of a court in a proceeding under chapter X of the Bankruptcy Act. Pending an adjudication under paragraph (1) such court shall stay, and upon appointment by it of a trustee as provided in paragraph (3) such court shall continue the stay of, any pending bankruptcy, mortgage foreclosure, equity receivership, or other proceeding to reorganize, conserve, or liquidate the debtor or its property and any other suit against any receiver, conservator, or trustee of the debtor or its property. Pending such adjudication and upon the appointment by it of such trustee, the court may stay any proceeding to enforce a lien against property of the debtor or any other suit against the debtor. Pending such adjudication, such court may appoint a temporary receiver.

(3) Appointment of trustee.—If the court grants an application and makes an adjudication under paragraph (1), the court shall forthwith appoint as trustee for the liquidation of the business of the debtor in accordance with section 6, and as attorney for such trustee, such persons as SIPC shall specify. No person shall be appointed as such

trustee or attorney if such person is not "disinterested" within the meaning of section 558 of Title 11.

(4) Debtor and filing date defined.—For purposes of this chapter—

(A) Debtor.—The term "debtor" means a member of SIPC in respect of whom an application has been filed pursuant to subsection (a) (2) of this section.

(B) Filing date.—The term "filing date" means the date on which an application with respect to any debtor is filed under subsection (a) (2) of this section that if—

(i) a petition was filed before such date by or against the debtor under the Bankruptcy Act, or

(ii) the debtor is the subject of a proceeding pending in any court or before any agency of the United States or any State in which a receiver, trustee, or liquidator for such debtor was appointed which proceeding was commenced before the date on which such application was filed,

then the term "filing date" means the date on which such petition was filed or such proceeding commenced.

(c) SEC participation in proceedings.—The Commission may, on its own motion, file notice of its appearance in any proceeding under this chapter and may thereafter participate as a party.

§ 78fff. Liquidation proceedings

(a) General purposes of liquidation proceeding.—The purposes of any proceeding in which a trustee has been appointed under section 78eee(b) (3) of this title (hereafter in this section referred to as a "liquidation proceeding") shall be:

(1) as promptly as possible after such appointment and in accordance with the provisions of this section—

(A) to return specifically identifiable property to the customers of the debtor entitled thereto;

(B) to distribute the single and separate fund, and (in advance thereof or concurrently therewith) pay to customers moneys advanced by SIPC, as provided in subsection (f) of this section;

(2) to operate the business of the debtor in order to complete open contractual commitments of the debtor pursuant to subsection (d) of this section;

(3) to enforce rights of subrogation as provided in this chapter; and

(4) to liquidate the business of the debtor.

(b) Powers and Duties of Trustee.—

(1) Trustee powers.—A trustee appointed under section 78eee (b) (3) of this title (hereinafter referred to as "trustee") shall be vested with the same powers and title with respect to the debtor and the property of the debtor, and the same rights to avoid preferences, as a trustee in bankruptcy and a trustee under chapter X of the Bankruptcy Act have with respect to a bankrupt and a chapter X debtor.

In addition, a trustee shall have the right—

(A) with the approval of SIPC, to hire and fix the compensation of all personnel (including officers and employees of the debtor and of its examining authority) and other persons (including but not limited to accountants) that are deemed by such trustee necessary for all or any purposes of the liquidation proceeding, and

(B) to operate the business of the debtor in order to complete open contractual commitments pursuant to subsection (d) of this section,

and no approval of the court shall be required therefor.

(2) Trustee duties.—Except as inconsistent with the provisions of this chapter or otherwise ordered by the court, a trustee shall be subject to the same duties as a trustee appointed under section 72 of Title 11, except that a trustee may, but shall have no duty to reduce to money any securities in the single and separate fund (provided under subsection (c) (2) (B) of this section) or in the general estate of the debtor.

(c) Application of Bankruptcy Act.—

(1) General provisions applicable.—Except as inconsistent with the provisions of this chapter and except that in no event shall a plan of reorganization be formulated, a liquidation proceeding shall be conducted in accordance with, and as though it were being conducted under, the provisions of chapter X and such of the provisions (other than section 96(e) of Title 11) of chapters I to VII, inclusive, of the Bankruptcy Act as section 502 of Title 11 would make applicable if an order of the court had been entered directing that bankruptcy be proceeded with pursuant to the provisions of such chapters I to VII, inclusive; except that the court may, for such period as may be appropriate, stay enforcement of, but shall not abrogate, the rights provided in section 108 of Title 11 and the right to enforce a valid, non-preferential lien or pledge against the property of the debtor. For purposes of applying the Bankruptcy Act in carrying out this section, any reference in the Bankruptcy Act to the date of commencement of proceedings under the Bankruptcy Act shall be deemed to be a reference to the filing date (as defined in section 78eee (b) (4) (B) of this title).

(2) Special provisions.—The following subparagraphs of this paragraph shall apply to a liquidation proceeding in lieu of section 96(e) of Title 11:

(A) Definitions.—Except as otherwise expressly provided in this section, for purposes of this section and the application of the Bankruptcy Act to a liquidation proceeding—

(i) "property" includes cash and securities, whether or not negotiable and all property of a similar character;

(ii) "customers" of a debtor means persons (including persons with whom the debtor deals as principal or agent) who have claims on account of securities received, acquired, or held by the debtor from or for the account of such persons (I) for safekeeping, or (II) with a view to sale, or (III) to cover consummated sales, or (IV) pursuant to purchases, or (V) as collateral security, or (VI) by way of loans of securities by such persons to the debtor, and shall include persons who have claims against the debtor arising out of sales or conversions of such securities, and shall include any person who has deposited cash with the debtor for the purpose of purchasing securities, but shall not include any person to the extent that such person has a claim for property which by contract, agreement, or understanding, or by operation of law, is part of the capital of the debtor or is subordinated to the claims of creditors of the debtor;

(iii) "cash customer" means, with respect to any securities or cash, customers entitled to immediate possession of such securities or cash without the payment of any sum to the debtor, and for purposes of this clause, the same person may be a cash customer with reference to certain securities or cash and not a cash customer with reference to other securities or cash;

(iv) "net equity" of a customer's account or accounts means the dollar amount thereof determined by giving effect to open contractual commitments completed as provided in subsection (d) of this section, by excluding any specifically identifiable property reclaimable by the customer, and by subtracting the indebtedness, if any, of the customer to the debtor from the sum which would have been owing by the debtor to the customer had the debtor liquidated, by sale or purchase on the filing date, all other securities and contractual commitments of the customer, and for purposes of this definition, accounts held by a customer in separate capacities shall be deemed to be accounts of separate customers; and

(v) "securities" has the same meaning as such term has under section 96(e) of Title 11.

(B) Single and separate fund.—All property at any time received, acquired, or held by or for the account of a debtor from or for the account of customers except cash customers who are able to identify specifically their property in the manner prescribed in subparagraph (C), and the proceeds of all customers' property transferred by the debtor, including property unlawfully converted, shall constitute a single and separate fund; and all customers except such cash customers shall constitute a single and separate class of creditors, entitled to share ratably in such fund on the basis of their respective net equities as of the filing date and in priority to all other payments, except that (i) there shall be repaid to SIPC, in priority to all other claims payable from such single and separate fund, the amount of all advances made by SIPC to the trustee to permit the completion of open contractual commitments pursuant to subsection (d) of this section, and (ii) to the extent that any other assets of the debtor may be available therefor or as otherwise ordered by the

court, all costs and expenses specified in clauses (1) and (2) of section 104(a) of Title 11 shall be paid from such single and separate rate fund in priority to the claims of such single and separate class of creditors, and any moneys advanced by SIPC for such costs and expenses shall be recouped as such. If such single and separate fund shall not be sufficient to pay in full the claims of such single and separate class of creditors, the creditors of such class shall be entitled, to the extent only of their respective unpaid balances, to share in the general estate with general creditors. In, or for the purpose of, distributing such fund, all property other than cash shall be valued as of the close of business on the filing date. To the greatest extent considered practicable by the trustee, the trustee shall deliver in payment of claims of customers for their net equities based upon securities held on the filing date in their accounts (after giving effect to open contractual commitments completed as hereinafter provided), securities of the same class and series of an issuer ratably up to the respective amounts which were so held in such accounts. Any property remaining after the liquidation of a lien or pledge made by a debtor shall be apportioned between his general estate and the single and separate fund in the proportion in which the general property of the debtor and the property of his customers contributed to such lien or pledge.

(C) Specifically identifiable property.—The trustee shall return specifically identifiable property to the customers of the debtor, entitled thereto. No cash or securities at any time received, acquired, or held by or for the account of a debtor from or for the accounts of customers shall for the purposes of this paragraph be deemed to be specifically identified, unless such property remained in its identical form in the debtor's possession until the filing date, or unless such property was allocated to or physically

set aside for such customers on the filing date. In determining whether property was allocated to or physically set aside for such customers, it shall be sufficient that on the filing date:

(i) securities are segregated individually, or in bulk for customers collectively;

(ii) in the case of securities held for the account of the debtor as part of any central certificate service of any clearing corporation or any similar depositary—

(I) the records of the debtor show or there is otherwise established to the satisfaction of the trustee that all or a specified part of the securities held by such clearing corporation or other similar depositary are held for specified customers, or for customers collectively, and

(II) such records of the debtor also show or there is otherwise established to the satisfaction of the trustee the identities of the particular customers entitled to receive specified numbers or units of such securities so held for customers collectively; or

(iii) such property is held for the account of customers of the debtor in such other manner as the Commission, for the protection of customers and other creditors on a fair and equitable basis, by rule or regulation shall have determined to be sufficiently identifiable as the property of such customers.

If there is any shortage in securities of the same class and series of an issuer so segregated in bulk or otherwise held for customers pursuant to this subparagraph, as compared to the aggregate rights of particular customers to receive securities of such class and series, the respective interests of such customers in such securities of such class and series shall be prorated, without prejudice, however, to the sa-

tisfaction of any claim for deficiencies as otherwise provided in this section.

(D) Where such single and separate fund is not sufficient to pay in full the claims of such single and separate class of creditors, a transfer by a debtor of any property which, except for such transfer, would have been a part of such fund may be recovered by the trustee for the benefit of such fund, if such transfer is voidable or void under the provisions of the Bankruptcy Act. For the purpose of such recovery, the property so transferred shall be deemed to have been the property of the debtor and, if such transfer was made to a customer or for his benefit, such customer shall be deemed to have been a creditor, the laws of any State to the contrary notwithstanding. Subject to the provisions of paragraph (D), if any securities received or acquired by a debtor from a cash customer are transferred by the debtor, such customer shall not have any specific interest in or specific right to any securities of like kind on hand on the filing date, but such securities of like kind or the proceeds thereof shall be come part of such single and separate fund.

(d) Completion of open contractural (sic) commitments. —The trustee shall complete those contractual commitments of the debtor relating to transactions in securities which were made in the ordinary course of debtor's business and which were outstanding on the filing date—

(1) in which a customer had an interest, except those commitments the completion of which the Commission shall have determined by rule or regulation not to be in the public interest, or

(2) in which a customer did not have an interest, to the extent that the Commission shall by rule or regulation have determined the completion of such commitments to be in the public interest.

For purposes of this subsection (but not for any other purpose of this chapter) (i) the term "customer" means any person other than a broker or dealer, and (ii) a customer shall be deemed to have had an interest in a transaction if a broker participating in the transaction was acting as agent for a customer, or if a dealer participating in the transaction held a customer's order which was to be executed as a part of the transaction. All property at any time received, acquired, or held by or for the account of the debtor except for cash or securities that are specifically identifiable as the property of particular customers and are not the subject of an open contractual commitment), and all property in the single and separate fund, shall be available to complete open contractual commitments pursuant to this subsection. Securities purchased or cash received by the trustee upon completion of any such commitment shall constitute specifically identifiable property of a customer to the extent that such commitment was completed with property which constituted specifically identifiable property of such customer on the filing date, or was paid or delivered by or for the account of such customer to the debtor or the trustee after the filing date.

(e) Notice.—Promptly after his appointment, the trustee shall cause notice of the commencement of proceedings under this section to be published in accordance with a designation of the court, made in accordance with the requirements of section 51 of Title 11, and at the same time shall cause to be mailed a copy of such notice to each of the customers of the debtor as their addresses shall appear from the debtor's books and records. Except as the trustee may otherwise permit, claims for specifically identifiable property (other than securities registered in the name of the claimant or segregated for him in his individual name)

or claims payable from property in the single and separate fund or payable with moneys advanced by SIPC, shall not be paid other than from the general estate of the debtor unless filed within such period of time (not exceeding sixty days after such publication) as may be fixed by the court, and no claim shall be allowed after the time specified in section 93 of Title 11. Subject to the foregoing, and without limiting the powers and duties of the trustee to discharge promptly obligations as specified in this section, the court may make appropriate provision for proof and enforcement of all claims against the debtor including those of any subrogee.

(f) SIPC advances to trustee.—

(1) Advances for customers' claims.—In order to provide for prompt payment and satisfaction of the net equities of customers of debtor, SIPC shall advance to the trustee such moneys as may be required to pay or otherwise satisfy claims in full of each customer, but not to exceed $50,000 for such customer; except that—

(A) insofar as all or any portion of the net equity of a customer is a claim for cash, as distinct from securities, the amount advanced by reason of such claim to cash shall not exceed $20,000,000;

(B) a customer who holds accounts with the debtor in separate capacities shall be deemed to be a different customer in each capacity;

(C) no such advance shall be made by SIPC to the trustee to pay or otherwise satisfy, directly or indirectly, any claims of any customer who is a general partner, officer, or director of the debtor, the beneficial owner of 5 per centum or more of any class of equity security of the debtor (other

than a non-convertible stock having fixed preferential dividend and liquidation rights) or limited partner with a participation of 5 per centum or more in the net assets or net profits of the debtor; and

(D) no such advance shall be made by SIPC to the trustee to pay or otherwise satisfy claims of any customer who is a broker or dealer or bank other than to the extent that it shall be established to the satisfaction of the trustee, from the books and records of the debtor of form the books and records of a broker or dealer or bank or otherwise, that claims of such broker or dealer or bank against the debtor arise out of transactions for customers of such broker or dealer or bank, in which event, each such customer of such broker or dealer or bank shall be deemed a separate customer of the debtor.

To the extent that moneys are advanced by SIPC to the trustee to pay the claims of customers, SIPC shall be subrogated to the claims of such customers with the rights and priorities provided in this section.

(2) Other advances.—SIPC may advance to the trustee such moneys as may be required to effectuate subsection (b) (1) (A) of this section. SIPC shall advance to the trustee such moneys as (with those available pursuant to subsection (d) of this section) may be required to effectuate subsection (d) of this section.

(g) Payments to customers; no proof of claim required. —It shall be the duty of the trustee to discharge promptly, in accordance with the provisions of this section, all obligations of the debtor to each of its customers relating to, or net equities based upon, securities for cash by the delivery of securities or the effecting of payments to such customer

(subject to subsection (f) (1) of this section, to the extent that such payments are made out of advances from SIPC under such subsection) insofar as such obligations are ascertainable from the books and records of the debtor or are otherwise established to the satisfaction of the trustee, whether or not such customer shall have filed formal proof of such claim. For that purpose the court among other things shall—

(1) in respect of claims relating to securities or cash, authorize the trustee to make payment out of moneys made available to the trustee by SIPC notwithstanding the fact that there shall not have been any showing or determination that there are sufficient funds of the debtor available to make such payment; and

(2) in respect of claims relating to, or net equities based upon, securities of a class and series of an issuer, which are ascertainable from the books and records of the debtor or are otherwise established to the satisfaction of the trustee, authorize the trustee to deliver securities of such class and series if and to the extent available to satisfy such claims in whole or in part, with partial deliveries to be made pro rata to the greatest extent considered practicable by the trustee.

Any payment or delivery of property pursuant to this subsection may be conditioned upon the trustee requiring claimants to execute in a form to be determined by the trustee, appropriate receipts, supporting affidavits, and assignments, but shall be without prejudice to the right of any claimant to file formal proof of claim within the period specified in subsection (e) of this section for any balance of securities or cash to which he may deem himself entitled.

(h) Proof of claim by associates and others.—The provisions of this section permitting discharge of obligations of the debtor to pay cash or to deliver securities without formal proof of claim shall not apply to any person "associated" with the dobtor as defined in section 78(a) (18) of this title, to any beneficial owner of 5 per centum or more of the voting stock of the debtor, or to any member of the immediate family of any of the foregoing.

(i) Reports by trustee to court.—All reports to the court by a trustee (other than reports required to be filed pursuant to section 567(3) of Title 11) shall be in such form and detail as, having due regard to the requirements of section 787q of this title and the rules and regulations thereunder and the magnitude of items and transactions involved in connection with the operations of a broker or dealer, the Commission shall determine by rules and regulations to present fairly the results of such proceeding as at the dates or for the periods covered by such reports.

(j) Effect of chapter on claims.—Except as otherwise provided in this section, nothing in this section shall limit the right of any person to establish by formal proof such claims as such person may have to payment, or to delivery of specific securities, without resort to moneys advanced by SIPC to the trustee.